Issues Raised by Expansion of the Use of Electronic Health Records In School Health Services

Electronic Patient Information
&
Policy Development Workgroup

September 11, 2006

I. Introduction

The 2005 legislation that created the Task Force to Study Electronic Health Records[1] included a specific directive that the Task Force study "the impact of the current and future expansion [of the use of electronic health records] on school health records" as part of its examination of the broader policy issues inherent in the adoption and use of electronic health information exchange in Maryland. The Electronic Patient Information Workgroup, one of three such groups appointed by the Task Force Chair to examine different aspects of the legislative charge, will explore the potential impact on school health records of an increased use of electronic health records: this briefing paper presents background on these issues compiled by a consultant to the Maryland Health Care Commission, in collaboration with Commission staff. [2]

There are two categories of health services provided in Maryland schools, in two distinct settings: the traditional services -- provided by a resident or shared school nurse or other professional, consisting of immunization monitoring, first aid and injury treatment, periodic health screenings required by statute, medication administration, and referrals for further care – and school-based health centers. Maryland's 61 school-based health centers (SBHCs)[3] "provide a wide variety of medical, mental, and dental health services, either on-site or off-site by referral." They were established in Maryland statute to help prevent or provide early intervention in the health problems that interfere with students' ability to learn, and also to serve as a safety net provider for under- and uninsured families.

These two settings of care are subject to different federal and state statutory, regulatory, and policy directives regarding the privacy and confidentiality of student health records, as well as when -- and to whom – these records may be disclosed. Traditional school health records are considered part of a student's educational record, and thus, at least at public schools, covered by well-established federal law governing privacy and permitted disclosures. Records of care at SBHCs, however, are true medical records -- often very sensitive ones dealing with reproductive health, behavioral health, and abuse/violence issues. According to regulations governing the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA) issued in December 2000, both school nurses and "on-site clinics" may qualify as a "covered entity" if either "engages in a HIPAA [electronic] transaction."[4] Beyond that cautionary statement, however, the HIPAA statute and rules are silent on the subject of SBHCs; the lack of clarity over the governing framework for the privacy and confidentiality of these medical records is more significant in light of the fact that, currently, none of Maryland's 61 school-based health

[1] SB 251 (Chapter 291, Laws of 2005).

[2] In addition, members of the Workgroup and Task Force as a whole will have an opportunity to tour a school-based health center and, if possible, a school health services office that employs computer-based record keeping, coordinated by Anne Walker, the Maryland State Department of Education analyst who oversees this category of school health services.

[3] SBHCs are located in 22 elementary schools, 3 elementary/middle schools, 13 middle schools, 19 high schools, and 4 special schools. They are found in all regions of the State, including Baltimore City (19), and the following counties: Baltimore (15), Caroline (5), Cecil (2), Dorchester (4), Harford (5), Montgomery (3), Prince George's (3), Talbot (3), Washington (1), and Wicomico (1). Comprehensive information on the 61 SBHCs, including statistical reports on each jurisdiction's centers, may be found on the SBHC page at the MSDE website, http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/school_based_health_centers/

[4] The Center for Health and Health Care in Schools, "*Safeguarding Individual Health Privacy: A Review of HIPAA Regulations,"* from *In Focus: An In-Depth Analysis of Emerging Health Issues in Schools,"* August 27, 2002. The Center for Health and Health Care in Schools (CHHCS) is a "nonpartisan policy and program resource center located at the George Washington University School of Public Health and Health Services in Washington DC."

centers has any capability for conducting transactions electronically. Most information exchange between Maryland's SBHCs and contracting providers and payers is accomplished on the telephone, and via fax and paper billing. Despite the absence of electronic transmissions, however, the policy of the Maryland State Department of Education (MSDE) is to treat all SBHC records and transactions as covered by HIPAA rules for privacy, security, and disclosure.[5]

The lack of clarity and the apparent contradictions in privacy and disclosure has been cited as a significant problem by the National Association of School Nurses and other entities concerned with school health and privacy issues. The consensus across these groups and among state and local education agencies is that the U.S. Department of Health and Human Services and Department of Education should provide technical and legal assistance to resolve these discrepancies.

The information contained in this report does not constitute an official position by the Maryland Health Care Commission, the Task Force to Study Electronic Health Records, or any of the parties involved in its development. This report was developed by Misty Meadow Holdings, Inc. and the Maryland Health Care Commission's Center for Information Technology.

II. The Educational Record: Its Relationship to Traditional School Health Services, and to Electronic Information Exchange

As in health care, public education is being encouraged – and, increasingly, mandated – to get onto the Information Superhighway. In education, the impetus for increasing the use of information technology is the need to demonstrate compliance with the No Child Left Behind Act of 2001 (NCLB), which – among many other mandates -- requires school districts to submit extensive data on educational outcomes. The focus of these requirements is not on student health and well-being, except for determining the need for, and assessing outcomes of, services provided to students with disabilities. By and large, the primary purpose of upgrading IT in education is as a means of demonstrating compliance with standards in order to retain federal funding.

NCLB required the development of a National Education Technology Plan, which the Department of Education published in January 2005. This plan identified seven major action steps, one of which called upon school districts and states to "integrate data systems," stating that "[i]ntegrated, interoperable data systems are the key to better allocation of resources, greater management efficiency, and online and technology-based assessment of student performance that empower educators to transform teaching and personalize instruction."[6] However, this Plan does not deal specifically with the school health records component of educational records – which themselves are only a fraction of the data exchange between the federal, state, and local educational authorities under NCLB and other statutes.

Several key pieces of federal legislation define the framework for confidentiality and permitted disclosures of educational records, including:

[5] Information provided in a telephone conversation with Anne Walker of MSDE, August 4, 2006.
[6] *Toward A New Golden Age in American Education: The National Education Technology Plan, 2004*. January 2005.

- The Family Educational Rights and Privacy Act of 1974 (FERPA, or the Buckley Amendment), which protects the privacy rights of students by requiring parental consent for access to their records, except for access by "school officials with legitimate educational interest," as defined by individual school districts.
- The Protection of Pupil Rights Amendment (PPRA, or the Hatch Amendment) of 1998 (amended further in 2001 by NCLB), which applies to all schools that receive federal funding, and requires prior consent from a parent or guardian if information is sought about certain outlined topics, some of which include sensitive health information.
- The Individuals with Disabilities Education Act (IDEA), originally enacted in 1975, and reauthorized in 2004 under the name Individuals with Disabilities Education Improvement Act. IDEIA expands the protections provided by FERPA, outlining procedures for parental notification, record retention, storage, and destruction; training requirements; and the publication of the names of staff members with access to student information.
- State laws and regulations, often augmented by regularly-updated manuals that provide extensive guidance to administrators and teachers. The *Maryland Student Records System Manual 2006*[7] contains policies and guidelines for compliance with the statute governing educational records (Education Article §2-205, Annotated Code of Maryland), and sixteen separate regulations under Title 13A, State Board of Education, as well as two regulations under the Department of Health and Mental Hygiene's Title 10, governing immunizations and screening for lead poisoning.

Guidelines for Protecting Confidential Student Health Information, published in 2000 by the American School Health Association, describes the scope of school health records as including, at a minimum, " information required by state law such as the following:

1. mandated immunizations;
2. health and physical assessment data;
3. health screenings for vision, hearing, scoliosis or cholesterol;
4. injury reports;
5. incident reports of alcohol or drug use in school;
6. health assessments and other evaluation reports related to eligibility for services under the Individuals with Disabilities Education Act (IDEA) and §504 of the Rehabilitation Act of 1973, and
7. referrals for suspected child abuse."

In fact, school health records often contain significantly more information, whether generated by parents or health care providers and submitted to the school, or created at the school, in noting illnesses and injuries. Typically, school health records document functional health problems – the "chief complaint" with which a student presents at the health suite – rather than medical diagnoses. School health records can contain a combination of paper and electronic information. Reportedly, an increasing number of school systems are making use of a growing number of software programs to contain and organize school records, including those related to school health services. This could increase the amount of electronic health-related information available for exchange.

[7] *Maryland Student Records System Manual 2006* includes Student Record Card forms: SR Card 5 contains a student's health screening records, but SR Card 6 has been replaced by a health department form, and the record must also include a blood lead testing certificate, in areas defined as at risk for lead poisoning.

The National Education Technology Plan also identified the *Schools Interoperability Framework (SIF)* as the standard for sharing data and system interoperability in *educational* record-keeping and information exchange. The SIF standard accommodates data exchange as well as multiple "vertical reporting" or data aggregation models. The latest software upgrade, scheduled to be released around September of this year includes some applications to record immunization information, as well as features related to adaptive technology for students with special needs.[8]

Vendors of educational records and data exchange software pay for review and certification of compliance with the SIF standard by *The Open Group,* described on its website as "a vendor-neutral and technology-neutral consortium, whose vision of Boundaryless Information Flow™ . . . enable access to integrated information, within and among enterprises, based on open standards and global interoperability."[9] Vendors can have their products certified to each successive release of the SIF. The Schools Interoperability Framework Association is a non-profit organization that supports this standard, and includes in its membership representatives of school systems as well as vendors; there are currently 300 members of the SIF Association, including MSDE.[10]

Student information systems with student health record functionality are being increasingly adopted and implemented by school systems across the country, but health record functionality typically represents a small segment of the capability of these systems. Most of the functionality of these systems is devoted to student demographic information, academic assessment information, grades, transportation management, library management, cafeteria management, parent access via the Internet, as well as the functions that support the data aggregation and reporting to school districts, state departments of education, and the federal education authorities.

Some counties in Maryland have implemented electronic educational records. Carroll County public schools use the SASI Student Information System from Pearson School Systems, which does have electronic health records capability, including a medical assessment function, emergency contacts, and immunizations. SASI permits data entry of medical information by parents, physicians, and other medical practitioners; it also provides interfaces for State reporting requirements. Carroll County recently used the system to screen student records to identify candidates to receive 6000 available doses of FluMist. Washington County uses the CIMS Student Information System, an earlier Pearson School Systems product. Baltimore County developed its own system for electronic health record keeping. Howard County has installed a system by Chancery Software Ltd., which was acquired in May 2006 by Pearson School Systems. Frederick County uses the Pentamation Student Information System from SunGuard.[11] Implementing electronic education records is viewed by many as an important first step.

---

[8] The SIF standard is based on XML (Extensible Markup Language), as the technical language for this information exchange. XML is an initiative of the World Wide Web Consortium (W3C), an international standards body. XML allows information and services to be encoded with meaningful structure and semantics that both computers and humans can understand. A powerful benefit of using XML is the ability to "wrap" or leverage other existing standards (such as common standards for electronic health information exchange, like HL7 or DICOM) so they can be used in future implementations of the framework.

[9] See the Open Group website at www.opengroup.org.

[10] Telephone interview with Laurie Collins, Project Strategist, Schools Interoperability Foundation Association, July 2006. See the SIF website at www.sifinfo.org

[11] Telephone interview with Steve Guthrie**,** Assistant Superintendent of Administration, Carroll County Public Schools, July 2006.

Maryland is not alone in its use of information technology, as other states have also taken initiatives to implement electronic education records. Delaware's Department of Education uses eSchoolPLUS+ from Sungard Pentamation which includes a health tracking module. Although all of its districts have the system, not all use this functionality. In the future, the vendor plans to add an immunizations function to the application.[12] In Oklahoma, their legislature enacted a mandate that its schools adopt the Schools Interoperability Framework as a requirement for all future implementation of electronic records systems.[13] South Carolina's Department of Education and Virginia's Department of Education also use the Pearson SASI System to track immunization records, health/emergency contacts, health history, TB/skin tests, and health screenings for vision, hearing, height, and weight. Local school data is uploaded daily to district office, and on a quarterly basis to state educational officials, to provide demographic and academic information.

III. School-Based Health Centers: Medical Records Go To School

School health officials across the country seek clarification regarding privacy and disclosure protections afforded to traditional school health records -- individually-identifiable information considered by federal statute to be part of a student's educational record -- and those that cover the medical records created from patient encounters at school-based health centers. The National Association of School Nurses articulated this problem, in its July 2004 issue brief "Privacy Standards for Student Health Records":

> While the Preamble to the Privacy Rule of [HIPAA] specifically *excludes*, as covered entities, schools and universities already covered by [FERPA] . . . there are both exceptions to that provision and a myriad of related legal and practice issues at the interface of HIPAA and FERPA. These have yet to be addressed through technical assistance by the U.S. Department of Health and Human Services and the U.S. Department of Education.[14]

Some elements of the school health services segment of the educational record clearly qualify as a medical record, but their position under the law is still unclear, since neither HIPAA nor FERPA explicitly address the subject.[15] Immunization records, for example, have received much attention among legal and policy experts across the nation, asked by their states' educational authorities to clarify the circumstances under which immunization information may be disclosed, by a provider to the school, and by what means this disclosure can be made. Maryland has addressed this issue by creating the Immunet, a web-based application maintained by the state health department's Community Health Administration, on which immunization providers across the State are registered, and through which they can exchange information on students to their respective school health services staff.[16]

---

[12] Telephone interview with Linda Wolfe, Education Specialist for Health Services, Delaware Department of Education, July 2006.

[13] As reported by the Schools Interoperability Framework Association, in July 2006 telephone interview with Laurie Collins, Project Strategist.

[14] "Privacy Standards for Student Health Records," Issue Brief: The School Health Nurse's Role in Education, July 2004, National Association of School Nurses website at http://www.nasn.org.

[15] See "The FERPA-HIPAA Interface," in E-Journal of the GWU Center for Health and Health Care in Schools, June 2003, at www.healthinschools.org/ejournal/2003/privacy.htm

[16] See www.cha.state.md.us/mdimmunet/index.html

Another extremely important and sensitive issue raised by SBHCs relates to the individual state laws governing the right of minors to consent to treatment, and whether parental notification or consent is required. Until these complex issues are resolved, school systems have generally adopted common-sense and ethical approaches to the privacy of SBHC records, such as the policies already in place in Maryland, and measures recommended by many national school health associations and policy centers.

This position is consistent with the eight *Guidelines for Protecting Confidential Student Health Information,* developed by the National Task Force on Confidential Student Health Information and published in 2000[17]:

Guideline I: Distinguish student health information from other types of school records.
Guideline II: Extend to school health records the same protections granted medical records by federal and state law.
Guideline III: Establish uniform standards for collecting and recording student health information.
Guideline IV: Establish district policies and standard procedures for protecting confidentiality during the creation, storage, transfer, and destruction of student health records.
Guideline V: Require written, informed consent from the parent and, when appropriate, the student, to release medical and psychiatric diagnoses to other school personnel.
Guideline VI: Limit the disclosure of confidential health information within the school to information necessary to benefit students' health or education.
Guideline VII: Establish policies and standard procedures for requesting needed health information from outside sources and for releasing confidential health information, with parental consent, to outside agencies and individuals.
Guideline VIII: provide regular, periodic training for all new school staff, contracted service providers, substitute teachers, and school volunteers concerning the district's policies and procedures for protecting confidentiality.

The National Task Force explained that "the increasing presence in our nation's schools of students with chronic physical and emotional conditions, as well as behavioral or learning disorders, has made it more important than ever that school health professionals and administrators know how to handle confidential student health information." Several factors make it more difficult to determine when and how this information may be shared without compromising privacy: conflicts between the policies and practices of schools with the legal and ethical obligations of health care providers; inadequate preparation of staff; difficulties in communicating medical terms and cultural responses; and, especially, the inconsistencies between the federal and state laws that govern health and those related to education. These difficulties exist for traditional school health records, but are magnified for medical records generated by school-based health centers.

Pending clarification and resolution by federal health and education policymakers, Maryland's practice is consistent with the current consensus among national leaders in the area of school health records protection: that "what HIPAA and FERPA require for privacy protection are not technological gizmos or enhanced software, but an organizational commitment to the

[17] National Task Force on Confidential Student Health Information, *Guidelines for Protecting Confidential Student Health Information* (Kent, Ohio: American School Health Association, 2000), page 34.

principle that students and their families have a right to personal data privacy and security."[18] The Workgroup, and the Task Force, might consider this view of current practice, when weighing the potential cost of any mandate for electronic exchange of school health information.

IV. Issues for Further Discussion and Possible Task Force Recommendations

In determining what recommendations it might forward to the Governor and General Assembly on the potential impact of a wider use of electronic health information exchange on school health records, the Task Force might focus on several areas of discussion. What concerns do members have about the potential impact on school health records (of both categories) of an expanded adoption and use of electronic health information exchange? What are the compelling interests that might determine whether school health records, or the medical records generated by school-based health centers, are subject to electronic exchange? What considerations should determine the ownership of each category of record, the transfer or disclosure or records, and their longevity/disposal? Are additional directives or safeguards in these areas needed?

Some specific areas for discussion might include the following:

- The legal and programmatic disconnects between HIPAA and FERPA, the different levels of privacy protection they afford, and the need for clarity and guidance from the responsible federal agencies. (Given the nature of health information contained in the traditional school health records, is the FERPA protection sufficient?)

- Consent by minors to treatment, and issues related to disclosure of treatment at SBHCs, including parental notification and consent.

- The longevity of SBHC records, and their potential transfer to students (perhaps as a personal health record, or PHR) and to their health care providers (since significant health information may well be part of these records.)

- The cost of changing the records kept by, and transactions/transmissions of SBHC records to interoperable electronic formats.[19]

- The potential benefit (given the cost and competing priorities, and the lack of significant resources for conversion of school health records to electronic systems) of regulations or guidelines regarding confidentiality protections in the "lowest common denominator" technology employed by schools, in addition to the ethical guidelines, role-based access, and technological limitations that now define the treatment of these records?

---

[18] Martha Dewey Bergren, RN, MS, "HIPAA Hoopla: Privacy and Security of Identifiable Health Information," *The Journal of School Nursing* (Volume 17, Number 6) December 2001, page 338.

[19] In an August 29, 2006 telephone conversation with Kyu Rhee, M.D., Chief Medical Officer, Baltimore Medical System, Commission staff learned that BMS, which operates two SBHCs in Baltimore City, has responded to a Request for Proposals issued by MSDE, soliciting proosals to purchase and use electronic health information exchange in school health settings. The BMS proposal seeks approximately $30,000 in capital costs, for hardware and software needed to install an electronic medical record (EMR) system that would link the two BMS school-based health centers with the BMS EMR network, plus several thousand dollars per year for maintenance of the sites and systems at the schools.

References and Resources

Maryland State Department of Education. *Confidentiality guidelines for student education records and communications.* Baltimore, Maryland 1992.

Mazyck, Donna. "Confidentiality and Privacy of School Health Information." Presentation to the Task Force to Study Electronic Health Information. Baltimore Maryland. June 12, 2006.

Miller, Wanda, RN, MA, FNASN, CSN. Executive Director, National Association of School Nurses. E-mail exchange. July 2006.

National Task Force on Confidential Student Health Information. *Guidelines for Protecting Confidential Student Health Information*. American School Health Association, National Association of School Nurses, and National Association of School Nurse Consultants. Kent, Ohio: American School Health Association, 2000.

Pruitt, Allison, Membership Coordinator, Schools Interoperability Framework Association. Telephone interview. July 2006.

Rubin, Marcia A., PhD, MPH, FASHA. Director of Sponsored Programs, American School Health Association. Telephone inquiry. July 2006.

Schwab, Nadine; Panettieri, Mari Jo; Bergren, Martha Dewey. *Guidelines for School Nursing Documentation: Standards, Issues, and Models*. National Association of School Nurses. First Edition, 1991; Second Edition, 1998.

U.S. Department of Education. *Toward A New Golden Age in American Education: The National Education Technology Plan, 2004*. January 2005.

Important Web-Based Resources

Maryland State Department of Education Sites for School Health services and School-Based Health Centers:

http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/school_health_services/

http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/school_based_health_centers/

Center for Health and Health Care in Schools, George Washington University School of Public Health and Health Services, Washington DC:
www.healthinschools.org

The Maryland Assembly of School-Based Health Centers:
http://www.masbhc.org/

The Open Group, on the Schools Interoperability Framework:
http://www.opengroup.org/RI/sif.htm

The National School Nurses Association:
http://www.nasn.org/

The American School Health Association:
http://www.ashaweb.org/

Attachments

1. Maryland School-Based Health Centers FACT Sheet – November 2005 (From Maryland State Department of Education Website, http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/school_based_health_centers/)

2. "Privacy Standards for Student Health Records" Issue Brief: The School Health Nurse's Role in Education, July 2004, National Association of School Nurses website at http://www.nasn.org.

3. "School Health Records," Issue Brief: The School Health Nurse's Role in Education, July 2004, National Association of School Nurses website at http://www.nasn.org.

4. The Center for Health and Health Care in Schools, "*Safeguarding Individual Health Privacy: A Review of HIPAA Regulations,"* from *In Focus: An In-Depth Analysis of Emerging Health Issues in Schools,"* August 27, 2002.

5. Martha Dewey Bergren, RN, DNS, "HIPAA Hoopla: Privacy and Security of Identifiable Health Information," *The Journal of School Nursing* (Volume 17, Number 6) December 2001, pages 336-341.

6. Nadine C. Schwab, RN, MPH, PNP, "Records – The Achilles Heel of School Nursing: Answers to Bothersome Questions," *The Journal of School Nursing*, (Volume 20, Number 4) August 2004, pages 236-241.

7. Martha Dewey Bergren, RN, DNS, "HIPAA-FERPA Revisited," *The Journal of School Nursing*, (Volume 20, Number 2) April 2004, pages 107-112.

Maryland School Based Health Centers FACT Sheet – November 2005

What are school-based health centers?
The SBHC/Wellness Center can be a solution to some communities' particular health care needs. Research indicates that they provide a safe, efficient, and cost-effective way to deliver health services. The primary goal of School-Based Health Centers or Wellness Centers is the prevention and early intervention of medical, mental health and dental problems that interfere with the student's ability to learn. The secondary goal is to be a safety net provider for families that are uninsured and underinsured. Nurse practitioners, mental health practitioners, physicians and dentists may be available to provide services in a SBHC/Wellness Center depending on the funding and needs of the community.

Number of SBHCs in Maryland
Total: 61

Elementary Schools: 22
Elementary /Middle: 3
Middle Schools: 13
High Schools: 19
Special Schools: 4

Where are they located? Eleven jurisdictions have SBHCs: Baltimore City (19), Baltimore County (15), Caroline County (5), Cecil County (2), Dorchester County (4), Harford County (5), Montgomery County (3), Prince George's County (3), Talbot County (3), Washington County (1) and Wicomico County (1).

Number of children served: In 2002-2003 – 29,901 students were enrolled in SBHCs. The average visit per student was 3.9 visits per school year.

Services provided:
Maryland's 61 school-based health centers provide a wide variety of medical, mental, and dental health services, either on-site or off-site by referral. At a minimum, all SBHCs must offer medical health services. Services offered on-site include screenings (vision, hearing, etc.), immunizations, sports physicals, treatment of acute illnesses, chronic disease management, nutrition counseling, lab testing, prescriptions for medications behavioral risk assessments, anticipatory guidance, and assessment of psychosocial development. Mental health services (e.g. assessment, screening, diagnosis, crisis intervention, conflict resolution, individual and family therapy, grief and loss therapy, education and prevention programs, medication administration and follow-up, case management, skill-building, and counseling for substance use) were offered in 45 SBHCs (75%).Five SBHCs offered on-site oral health services by a dental health professional.

Funding:
Maryland's school-based health centers are funded by a variety of sources, which demonstrates the collaborative endorsement these centers receive. In FY 2004, the State distributed over $2 million in ongoing grant support to school-based health centers. Other sources of funding for Maryland's centers include federal, local health department and education agencies, private health care organizations, as well as other state sources. School-based health centers receive in-kind contributions from local schools and health departments, and Medicaid and other private insurance.

School-Based Health Center Policy Advisory Council:
As a codified entity, the Council takes a leadership role in overseeing the statewide promotion, development, sustainability and quality of SBHCs, in consultation with relevant public agencies and private organizations. Activities assigned to the Council are:

- To monitor the services of SBHCs
- Develop standards of care for school-based health centers
- Monitor legislative activity
- Continue to seek out funding opportunities and develop reimbursement strategies
- Formulate a statewide outcome measurement tool
- Prepare an annual report to the Maryland State Department of Education and the Department of Health and Mental Hygiene.

The 25-member Council consists of a diversity of stakeholders, including representatives from state and local agencies, public and private community organizations, and school-based health center users and their families. The Maryland School-Based Health Center Initiative will transfer to MSDE on July 1, 2005 and will provide staff support for the Council.

Annual Survey:

The Maryland School-Based Health Center Initiative has conducted an annual survey of school-based health centers in the State for the past six years. The purpose of the survey is to enable the State to monitor operations, registration and utilization, staffing patterns, and services provided by the centers. Every year, this survey form is reviewed and amended as needed.

Maryland School-Based Health and Wellness Centers & Contacts
August 1, 2006

School/Center Name	School/Center Address	Contact, Address & Phone Number
BALTIMORE CITY		
Carter Woodson K-8 SBHC	2501 Seabury Road Baltimore, MD 21225	Sharon Hobson Baltimore City Health Department 210 Guilford Ave, 2nd Floor Baltimore, MD 21202 410-396-8615 sharon.hobson@baltimorecity.gov
City Springs SBHC	100 South Caroline Street Baltimore, MD 21231	
Dr. Roland N. Patterson Sr. Academy/KIPP: UJIMA Village Academy SBHC	4701 Greenspring Avenue Baltimore, MD 21209	
Harford Heights Elementary Schools (PS #36 & PS #37) SBHC	1919 North Broadway Baltimore, MD 21213	
Harlem Park Middle/Baltimore Talent Development High SBHC	1500 Harlem Avenue Baltimore, MD 21217	
William S. Baer School SBHC	2001 North Warwick Ave Baltimore, MD 21216	
Lombard Middle/ Baltimore Freedom Academy SBHC	1601 East Lombard Street Baltimore, MD 21231	
Lake Clifton High School SBHC	2801 St. Lo Drive Baltimore, MD 21213	Gerry Waterfield Baltimore City Health Department 210 Guilford Ave, 2nd Floor Baltimore, MD 21202 410-396-8615 gerry.waterfield@baltimorecity.gov
Northwestern High School SBHC	6900 Park Heights Avenue Baltimore, MD 21215	
Patterson High School SBHC	100 Kane Street Baltimore, MD 21224	
Paul Lawrence Dunbar Senior High School SBHC	1400 Orleans Street Baltimore, MD 21231	
Digital Harbor High School SBHC	1100 Covington Street Baltimore, MD 21230	
Southside Academy/New Era Academy	2700 Seamon Avenue Baltimore, Maryland 21225	
Southwestern Senior High School SBHC	200 Font Hill Avenue Baltimore, MD 21223	
Homeland Academy (Walbrook High School)	2000 Edgewood Street Baltimore, MD 21216	
C.A.T.C.H., Canton Middle School	801 South Highland Avenue Baltimore, MD 21224	Kyu Rhee, MD Baltimore Medical System 3501 Sinclair Lane Baltimore, MD 21213 410-558-4881 Kyu.Rhee@bmsi.org
Highlandtown Middle SBHC	101 South Ellwood Avenue Baltimore, MD 21224	
Thurgood Marshall Middle School	5001 Sinclair Lane Baltimore, MD 21206	
Laurence G. Paquin School SBHC	2200 Sinclair Lane Baltimore, MD 21213	Brian Krebs Maryland General Hospital 827 Linden Avenue Baltimore, MD 21201 410-225-8642 bkrebs@marylandgeneral.org

School/Center Name	School/Center Address	Contact, Address & Phone Number
BALTIMORE COUNTY		
Bridge Center	1740 Twin Springs Road Baltimore, MD 21227	Debbie Somerville Barbara Masiulis Baltimore County Public Schools 9610 Pulaski Park Drive Baltimore, MD 21220 410-887-6368 dsomerville@bcps.org Sponsoring Agency: Baltimore County Department of Health 6401 York Road, 3rd Floor Baltimore, MD 21212 410-887-3422
Chesapeake High School SBWC	1801 Turkey Point Road Baltimore, MD 21221	
Deep Creek Middle School/ Sandalwood Elementary School SBWC	1000 S. Marlyn Avenue Baltimore, MD 21221	
Glenmar Elementary School SBWC Victory Villa Elementary School SBWC	9700 Community Drive Baltimore, MD 21220	
Hawthorne Elementary School SBWC	125 Kingston Road Baltimore, MD 21220	
Kenwood High School SBWC	501 Stemmers Run Road Baltimore, MD 21221	
Lansdowne High School SBWC	3800 Hollins Ferry Road Baltimore, MD 21227	
Martin Boulevard Elementary School SBWC	210 Riverton Road Baltimore, MD 21220	
Middlesex Elementary School SBWC	142 Bennett Road Baltimore, MD 21221	
Riverview Elementary School SBWC	3298 Kessler Road Baltimore, MD 21227	
Mars Estate/Deep Creek Elementary	1500 Homberg Baltimore, MD 21221	
Winfield Elementary School SBWC	8300 Carlson Lane Baltimore, MD 21207	
Woodlawn High School SBWC	1801 Woodlawn Drive Baltimore, MD 21207	
Lansdowne Middle School SBWC	2400 Lansdowne Road Baltimore, MD 21227	
CAROLINE COUNTY		
Colonel Richardson Middle School SBWC	25390 Richardson Road Federalsburg, MD 21632	Sue Brenchley Choptank Community Health System 301 Randolph Street, PO Box 660 Denton, MD 21629 410-479-4306 ext. 5019 sbrenchley@choptankhealth.org
Federalsburg Elementary School SBWC	302 South University Avenue Federalsburg, MD 21632	
Greensboro Elementary School SBWC	625 North Main Street Greensboro, MD 21639	
Lockerman Middle School SBWC	410 Lockerman Street Denton, MD 21629	
North Caroline High School	10990 River Road, Denton, MD 21629.	

School/Center Name	School/Center Address	Contact, Address & Phone Number
CECIL COUNTY		
Bainbridge Elementary School SBWC	41 Preston Drive Port Deposit, MD 21904	? Cecil County Health Department 401 Bow Street Elkton, MD 21921 410-996-5145, x-157 _____@dhmh.state.md.us
Holly Hall Elementary School SBWC	233 White Hall Road Elkton, MD 21921	
DORCHESTER COUNTY		
Cambridge South Dorchester High School SBWC	2475 Cambridge Beltway Cambridge, MD 21613	Kathleen Wise Dorchester County Health Department 2450 Cambridge Beltway Cambridge, MD. 21613 410-901-2388 hfd@fastol.com
Maces Lane Middle School SBWC	1101 Maces Lane Cambridge, MD 21613	
North Dorchester Middle School SBWC	5745 Cloverdale Road Hurlock, MD 21643	
North Dorchester High School SBWC	5875 Cloverdale Road Hurlock, MD 21643	
HARFORD COUNTY		
Edgewood Elementary School SBWC	2100 Cedar Drive Edgewood, MD 21040	Marcy Austin Magnolia Elementary School 901 Trimble Road Joppa, MD 21085 410-612-1734 marcy3@aol.com Sponsoring Agency: Harford County Health Department 119 Hays Street, PO Box 797 Bel Air, MD 21014 410-838-1500
Halls Crossroads Elementary School SBWC	203 Bel Air Avenue Aberdeen, MD 21001	
Havre de Grace Elementary School SBWC	600 Juanita Street Havre de Grace, MD 21078	
Magnolia Elementary School SBWC	901 Trimble Road Joppa, MD 21085	
William Paca Old Post Road Elementary School SBWC	2706 Philadelphia Road Abingdon, MD 21217	
MONTGOMERY COUNTY		
Broad Acres Elementary School SBHC	710 Beacon Drive Silver Spring, MD 20903	Joan Glick Montgomery County Department of Health and Human Services 401 Hungerford Drive, 2nd Flr Rockville, MD 20850 240-777-3494 joan.glick@montgomerycountymd.gov Mark Hodge Nurse Manager Montgomery County Department of Health and Human Services 1301 Piccard Drive, Suite 4200 Rockville, MD 20850 240-777-1574 mark.hodge@montgomerycountymd.gov
Harmony Hills Elementary School SBHC	13407 Lydia Street Silver Spring, MD 20906	
Gaithersburg Elementary School SBHC	35 N. Summit Avenue Gaithersburg, Md. 20877 No phone number right now	

PRINCE GEORGE'S COUNTY		
Fairmont Heights High School SBWC	1401 Nye Street Capitol Heights, MD 20743	Frances Caffie-Wright School-Based Wellness Program Prince George's County Health Department 1701 McCormick Dr, Suite 200 Largo, MD 20774 301-883-7887 FJWright@co.pg.md.us Pat Papa Prince George's County Public School System 7711 Livingston Rd Oxon Hill, MD 20745 301-749-4722 ppapa@pgcps.org Dr. Carole Pinckney Prince George's County Public School System 7711 Livingston Rd Oxon Hill, MD 20745 301-749-4722 cpinckney@pgcps.org
Northwestern High School SBWC	7000 Adelphi Road Hyattsville, MD 20782	
Oxon Hill High School SBWC Oxon Hill Community Pediatric Center (pm clinic)	6701 Leyte Drive Oxon Hill, MD 20745	
TALBOT COUNTY		
Easton Elementary School SBWC	305 Glenwood Avenue Easton, MD 21601	Julia Strong Talbot County Health Department 100 South Hanson Street Easton, MD 21601 410-819-5665 jrstrong@dhmh.state.md.us
Easton Middle School SBWC	201 Peachblossom Road Easton, MD 21601	
Easton High School SBWC	723 Mecklenberg Avenue Easton, MD 21601	
WASHINGTON COUNTY		
Western Heights Middle School SBWC	1300 Marshall Street Hagerstown, MD 21740	Rhonda Reid Washington County Health Department 1302 Pennsylvania Avenue Hagerstown, MD 21742 240-313-3462 RReid@dhmh.state.md.us
South Hagerstown High School SBWC	1101 South Potomac Street Hagerstown, MD 21740	
WICOMICO COUNTY		
Wicomico Middle School SBWC	635 East Main Street Salisbury, MD 21804	B. Joan Scott, RN, MSN Wicomico County Health Department 108 East Main Street Salisbury, MD 21801 410-543-6941 joan@dhmh.state.md.us Lisa Anderson, RN, BSN On-site Coordinator, Wicomico MS SBWC Wicomico County Health Department 108 East Main Street Salisbury, MD 21801 410-219-2842 LISA@dhmh.state.md.us

National Association of School Nurses

ISSUE BRIEF

School Health Nurse's Role in Education

PRIVACY STANDARDS FOR STUDENT HEALTH RECORDS

INTRODUCTION

Management of student health records is one of the most challenging responsibilities of school nurses. These responsibilities, usually shared with school district administrators, include the generation, maintenance, protection, disclosure, and destruction of students' school health records. Integrally related to these responsibilities are the legal and ethical principles of privacy, confidentiality, and consent. Complex to begin with, these record-management responsibilities and related legal precepts are frequently problematic for nursing professionals working with minor clients in school settings. This is particularly so today, for the reasons listed below.

- While school health records include personally identifiable health information of students and are generated by health professionals, they are, in most situations, considered education records, rather than health care records.
- Federal and state laws governing health and education records have different standards, language, requirements, and interpretations, even though the underlying principles have common roots. Today, more than in the past, the records include some of the same content.
- It is difficult to discern from the literature—due to the complexities involved—which law(s), if any, take precedence regarding students' health records (i.e., education versus medical, federal versus state).
- There are conflicts between health and education laws governing student records, confidentiality requirements, and access rights of parents and minor students.
- There are fundamental differences between legal standards in health and those in education related to adolescents' competence to give consent and make decisions for themselves. These differences sometimes cause practice dilemmas for school nurses (Schwab & Gelfman, 2001).
- Many school nurses are contract personnel, that is, they are hired by a health care agency to provide nursing services in the community's or county's public schools. Often the hiring agency, for example, a local health department, assumes that any records generated by the nursing staff are governed by health care laws, while the school district assumes that those same records are governed by education laws.
- School districts rarely have sufficient policies, procedures, and systems in place to ensure the privacy, security, and appropriate sharing of students' health and mental health information contained in today's health office and other school records.
- School nurses, like other school health professionals, are educated in the health care system and practice under health care laws. They rarely have pre-service preparation regarding education laws and standards relevant to the records they generate in schools, including student health and special education records.
- While the Preamble to the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) specifically *excludes,* as covered entities, schools and universities already covered by the Family Education Rights and Privacy Act (FERPA) (U.S. Department of Health and Human Services (USDHHS), 2000), there are both exceptions to that provision and a myriad of related legal and practice issues at the interface of HIPAA and FERPA. These have yet to be addressed through technical assistance by the U.S. Department of Health and Human Services or the U.S. Department of Education.

In addition to remaining questions regarding HIPAA and FERPA standards in relation to personally identifiable student health information and student health records, questions and conflicts remain between FERPA and the federal regulations governing records of patients in drug and alcohol treatment programs, and between FERPA and state minor consent-to-treatment laws. Both clarifications and remaining issues are briefly described below.

National Association of School Nurses, Inc.
8484 Georgia Avenue
Suite 420
Silver Spring, Maryland 20910

1-240-821-1130
1-301-585-1791 Fax
http://www.nasn.org
nasn@nasn.org

FERPA and School Health Records

The Family Education Rights and Privacy Act of 1974 (20 U.S.C. § 1232g) and its regulations (34 CFR § 99), as periodically revised by the U.S. Department of Education, set forth requirements for the protection and release of personally identifiable student information, including student health information. These requirements are applicable to all "education records" in public and private schools that receive any federal financial assistance. Education records are defined in the regulations as those records that are:

1. Directly related to a student; and
2. Maintained by an educational agency or institution or by a party acting for the agency or institution.

FERPA governs all student health records maintained by school employees or by contracted employees who provide "school health services" (Cheung, Clements, & Pechman, 1997), that is, health services directed to supporting students' participation and progress in school. These services are generally considered health promotion, health maintenance, and "related" or "support" services that enable students, especially those with special health care needs, to attend school, maintain (or improve) their health status during the school day, progress toward independence in self-care in the school setting, and achieve educational success. The matter of whether FERPA provides protection for oral communications of student information not otherwise documented in "student records" is not addressed in the regulations, remains subject to interpretation, and raises HIPAA-related issues. See Gelfman (2001) and Claghorn (2003). FERPA does not govern records of school-based health centers (SBHCs), although where a SBHC is fully operated by a school district, the applicable legal standards may require careful exploration and clarification by expert health and education attorneys.

The term "contracted employees" applies to school nurses who are employed by other agencies, including public ones, such as a town's department of health, and private ones, such as a "visiting nurse association," hospital, or other type of health care organization, when they are contracted by the school district (even via "handshake" across town departments) to provide "school health services" for the school district. The term may also include school-based health center personnel when, as employees of another community agency, they are contracted by the school district to provide "school health services" as support services for the school's student population. These contracted services are entirely separate and distinct responsibilities from the primary health care services (diagnostic and treatment services for parent-enrolled students) that are the primary mission of school-based health centers.

Health records are among the most sensitive records of both children and adults in our society and, traditionally, have been highly protected under law, medical practice standards, and the ethical codes of health professionals. Yet in schools, these records are often not distinguished from other types of education records (National Task Force on Confidential Student Health Information, 2000). FERPA provides a basic framework for protecting and disclosing student records, but leaves wide discretion to school districts for interpretation and implementation of the FERPA regulations. For example, FERPA permits school districts to define who in their district has a "legitimate educational interest" in accessing and disclosing various types of student records, including those generated by school health professionals, and those generated and released to schools with parental authorization by outside health care professionals.

FERPA does not require school district personnel to be trained in confidentiality requirements, nor does it impose consequences on school employees for non-permitted disclosures. Rather, it provides that, if a school district violates the requirements of FERPA, the district may be sanctioned through the loss of federal financial assistance.

HIPAA Privacy Rule and School Health Records

The Privacy Rule of the 1996 Health Insurance Portability and Accountability Act was published on December 28, 2000, by the U.S. Department of Health and Human Services, with an effective date of April 14, 2001. Significant modifications to the rule were published on August 14, 2002; compliance was required for most covered entities by April 14, 2003. This rule (45 CFR Parts 160 and 164) sets national standards for the privacy of individually identifiable health information and gives patients increased access to their medical records. Two other essential components of HIPAA address standard code and transaction sets for electronic transmissions of "individually identifiable health care information" (Transaction Rule) and security protections for protected health information (Security Rule) (USDHHS, 2003).

HIPAA and its regulations apply to health information created or maintained by: (1) health care providers who engage in certain electronic transactions, (2) health plans, and (3) health care clearinghouses (USDHHS, 2000). School-based health centers administered by covered entities and, in most instances, school-based health care providers employed by an agency other than a school district and who engage in certain electronic transactions, are subject to HIPAA. Schools and school health professionals whose records are covered by FERPA and who engage in certain electronic transactions (such as Medicaid billing) are likely covered by the HIPAA Transaction Rule, but not the HIPAA Privacy Rule (Bergren, 2003; Campanelli et al., 2003). Schools that receive no federal financial assistance and the health professionals that work in them may or may not be directly subject to the HIPAA Privacy Rule but, in any event, are advised to employ HIPAA standards as minimum criteria for practice.

In public schools, and non-public schools covered by FERPA, general implications of the HIPAA Privacy Rule for student health records include the following:

- The fundamental ethical and legal principles underlying FERPA and HIPAA are the same. FERPA protects student information in education records, while HIPAA protects individually identifiable health information, in any form, that is used or disclosed by a covered entity.
- HIPAA privacy requirements, which are more detailed and directive than FERPA privacy requirements, provide useful reference standards for school district policy, procedures, and practices related to the protection and disclosure of student health information. Guidelines for developing school district policy and procedures, using HIPAA, FERPA, IDEA, and ethical standards, are currently being developed by the American School Health Association in collaboration with the National Association of School Nurses, National Association of State School Nurse Consultants, and a national task force comprised of 12 national organizations, with funding from the Division of Adolescent and School Health in the Centers for Disease Control (Schwab et al., 2004)
- The HIPAA Privacy Rule excludes from its definition of "protected health information" education records covered by FERPA. As such, student records in schools and school districts that receive federal funding are generally not subject to HIPAA privacy provisions (USDHHS, 2000, p. 82483).
- School nurses are HIPAA-covered entities if they engage in HIPAA transactions, but the FERPA-covered records they are responsible for are not covered by the Privacy Rule. Thus, the records that are transmitted are subject to the HIPAA Transaction Rule, but not the Privacy Rule (Bergren, 2003; Campanelli et al., 2003; Grimms & Cordy, 2002).
- Clarification is still required in many states regarding the permissibility of communications between students' health care providers and school nurses about student health procedures that are mandated by state statute for public health policy reasons (e.g., immunization status, the results of health assessments that are required for school attendance, and communicable disease reporting). Some states have provided guidance or passed clarifying legislation.
- Education is required regarding the Privacy Rule provision that permits the disclosure of protected health information (PHI) by HIPAA-covered entities without specific informed consent, if the disclosure is for "treatment" purposes. Representatives of the Office of Civil Rights of the U.S. Department of Health and Human Services interpret the Rule's language to permit disclosures of PHI to school nurses who are providing treatment to a student (Campanelli et al., 2003), because school nurses meet the definition of "health care provider" under HIPAA. Nevertheless, many providers and their attorneys believe that they cannot disclose PHI, even for treatment purposes, to noncovered entities, even other health care providers. This becomes a barrier to care and is especially critical when physicians, or other authorized prescribers, issue a "medical order" for a student to receive a medication or medical treatment in school and the nurse, according to the state's Nurse Practice Act, may only carry out the treatment under the order of an authorized prescriber. The safety and efficacy of the treatment plan can be compromised if communication between the prescriber and nurse, related to a medical order and its execution in school, is hampered.

- Practice dilemmas continue for FERPA-covered entities related to conflicts between minors' legal rights to privacy in the health care system and parental rights to access and control the release of all education records of their minor children. HIPAA-covered entities, such as school-based health centers, have no such conflict, because HIPAA defers to state laws and professional practice standards in the health care community to determine when minors, rather than their parents or legal guardians, may give consent for the release of their own PHI (e.g., treatment for sexually transmitted diseases or drug and alcohol dependence). FERPA, however, does not recognize minor consent-to-treatment statutes, either in state or federal law. Thus, when student health records are covered by FERPA and a minor student consults the nurse for counseling or referral related to a health care need for which the minor student has the right under state law to consent to treatment, conflicts regarding documentation, access to, and release of related records remain. See Schwab and Gelfman (2001) for a more in-depth discussion of confidentiality, conflicts in the law, and related practice issues.

Other implications of the HIPAA Privacy Rule and related issues of importance to school nurses can be found in Bergren (2001a, 2001b, 2003, and 2004).

Federal Drug and Alcohol Confidentiality Regulations

Federal law and confidentiality regulations governing drug and alcohol treatment programs (42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2) apply to a student assistance program (SAP) within a school, if it "specializes, in whole or in part, in providing treatment, counseling, or assessment and referral services for students with alcohol or drug abuse problems" (Legal Action Center, 1996). These regulations protect the records of students who obtain services through an SAP team and prohibit their disclosure outside the team except under very limited circumstances (Legal Action Center, 1996). Conflicts remain between the confidentiality regulations and FERPA regarding parental access to such records (Gelfman & Schwab, 2001). Additionally, it is unclear whether, absent an SAP, the federal regulations apply to the record of a student referred by a school nurse to an outside community agency for assessment and treatment of a drug or alcohol problem. Nevertheless, individual states may have laws that apply to this circumstance.

State Minor Consent-to-Treatment Laws

Although extremely variable, most states have laws giving "mature" minors the right to consent to health care treatment for one or more types of health problems, including drug and alcohol abuse, sexually transmitted diseases, human immune virus (HIV), reproductive health, and mental health (Cohn, 2002). Because the right to consent to health care includes the right to determine whether, under what circumstances, and to whom the record of that care can be released, the mature minor who chooses to seek care under a mature minor statute or prevailing practice standards in the state has the right to privacy regarding that care. Conflicts exist when school health professionals refer students for health care to which the students have such a privacy right, because any record of the referral or related discussion with the student is also subject to FERPA, permitting parents to access all of their minor children's school records (Schwab & Gelfman, 2001; Siegler, 1996).

Role of the School Health Nurse

Although some conflicts and questions regarding legal standards remain, the underlying principles of federal and state health care and education privacy laws are remarkably similar. Furthermore, although FERPA governs education records as defined above, HIPAA provides more detailed and additional requirements, such as staff training and penalties for failure to follow the law. Similar provisions can and should be used to strengthen school district policies and administrative procedures governing student health information that is in oral, written, electronic, or another form, whether or not the districts are subject to HIPAA. School districts with school-based health centers operating in their buildings and those that bill Medicaid for school-based health services or otherwise do business with an entity covered by HIPAA are encouraged to employ HIPAA privacy standards, even if they are not required to do so by law. Such compliance demonstrates the district's respect for the sensitivity and confidentiality of student health information, augments their procedural compliance with FERPA, and enhances trust and communication among schools, parents, students, and health care providers.

School health nurses can provide leadership regarding the security and privacy of student health information in their school districts by:

- Becoming educated and staying current regarding relevant laws, regulations, and guidelines or technical assistance, both federal and state.
- Educating administrators and colleagues about relevant laws, regulations, and guidelines as they apply to school health records, whether oral, written, electronic, or in another form.
- Educating students and parents about their rights to privacy and the limitations to those rights, particularly in terms of health office procedures.
- Providing suggested language for policy and procedures that will enhance school district and staff compliance with the spirit and letter of the laws.
- Providing staff training, annually and as needed, on the legal and ethical principles of, and school district policy and procedures regarding, the privacy and confidentiality of student health information.
- Ensuring that health room procedures, records (electronic and paper), and equipment provide adequate security and privacy of health records, as well as appropriate internal sharing "for legitimate educational purposes."
- Using functional health problems (i.e., standardized nursing diagnoses) in combination with individualized Section 504 plans, individualized education programs, and/or individualized health care plans for communicating student health and safety needs to other staff. Functional health problems should be used in lieu of medical diagnoses, whenever appropriate (National Task Force on Confidential Student Health Information, 2000), and individualized plans should be distributed to appropriate staff instead of circulating a list of students with their medical conditions (Schwab & Gelfman, 2001).
- Notifying state health and education leaders and legislators about conflicts and problems that interfere with student services and safe nursing practice.

Of critical importance, school nurses need to collaborate with school medical advisors, school administrators, educators, other school health professionals and staff, parents, adolescent students, and community experts in ethics, privacy of health care information, and education records, to develop clear and specific policies and procedures based on law and ethics. School health advisory councils may provide excellent forums for addressing policy, procedure, and practice issues related to student health information. School districts need to consult with their attorneys regarding the implications of HIPAA for school operations, policies, and procedures. School nurses also need to promote and support local, state, and national initiatives to address and, where possible, resolve conflicts in the law.

REFERENCES

Bergren, M. D. (2004). HIPAA-FERPA revisited, *Journal of School Nursing,* accepted for publication.

Bergren, M. D. (2003). National Conference on HIPAA Privacy Rule, *NASNewsletter*, 18(4), 20–22. Available at http://www.nasn.org.

Bergren, M. D. (2001a). Electronic records and technology. In N. Schwab & M. Gelfman (Eds.) *Legal issues in school health services: A resource for school nurses, administrators and attorneys.* North Branch, MN: Sunrise River Press.

Bergren, M. D. (2001b). HIPAA hoopla: Privacy and security of identifiable health information. *Journal of School Nursing*, 17(6), 336–340.

Campanelli, R., McAndrew, S. D., Altarescu, L., Heide, C., Mayer, D., Kaminsky, S., & Seeger, R. K. (2003, March). Presented at the National Conference on the HIPAA Privacy Rule. Chicago, IL: U. S. Department of Health and Human Services. [Video. Available for $50 from: Workgroup for Electronic Data Interchange, 12020 Sunrise Valley Dr., Suite 100, Reston, VA 20191 (703) 391-2743.]

Cheung, O., Clements, B., & Pechman, E. (1997). *Protecting the privacy of student records: guidelines for education agencies*. Washington, DC: National Center for Education Statistics, U.S. Department of Education. Retrieved on July 20, 2002, from http://nces.ed.gov/pubs97/p97527/.

Claghorn, H, (2003). HIPAA Privacy Rule: What is it? Should your district care*? Texas Lone Star, 21*(1). Cohn, S. (with Gelfman, M., & Schwab, N.). (2001). Adolescent issues and rights of minors. In N. C. Schwab & M. H. B. Gelfman, Eds. L*egal issues in school health services*. North Branch, MN: Sunrise River Press.

Gelfman, M. (with Schwab, N.). (2001). School health records and documentation. In N. C. Schwab & M. H. B. Gelfman, Eds. *Legal issues in school health services*. North Branch, MN: Sunrise River Press.

Grimms, L., & Cordy, G. (2002). Medicaid reimbursement of school-based health care at the state-operated schools and HIPAA. Memorandum from the Oregon Department of Justice, Office of the Attorney General, to Alm, J., at the Oregon Department of Human Services and Hunt, M., at the Oregon Department of Education, November 12.

Legal Action Center. (1996). *Legal issues for school-based programs*. (2nd ed.). New York: Legal Action Center of the City of New York.

National Task Force on Confidential Student Health Information. (2000). *Guidelines for protecting confidential student health information*. Kent, OH: American School Health Association.

Schwab, N., & Gelfman, M. (2001). Confidentiality: Principles and practice issues. In N. C. Schwab & M. H. B. Gelfman, Eds. *Legal issues in school health services*. North Branch, MN: Sunrise River Press.

Schwab, N.C., Ruben, M., Maire, J. A., Gelfman, M. H. B., Bergren, M. D., Mazyck, D., & Hine, B. (2004). *Protecting and sharing student health information: Guidelines for developing school district policies and procedures.* Kent, OH: American School Health Association.

Siegler, G. E. (1996). What should be the scope of privacy protections of student health records? A look at Massachusetts and federal law. *Journal of Law and Medicine* 25(2), 237–269.

U.S. Department of Health and Human Services (USDHHS). (2003). HIPAA Privacy Rule: Complete Privacy, Security, and Enforcement (Procedural) Regulation Text. Retrieved January, 2004, from http://www.hhs.gov/ocr/hipaa/finalreg.html.

USDHHS. (2002). Final modifications to the HIPAA Privacy Rule. Retrieved January, 2004, from http://www.hhs.gov/ocr/hipaa/finalreg.html.

USDHHS. (2000, December 28). Preamble to the Standards for Privacy of Individually Identifiable Health Information [HIPAA Privacy Rule]. *Federal Register,* 65(250). Retrieved January 2004 from http://www.hhs.gov/ocr/part1.pdf.

July 2004

National Association of School Nurses, Inc.
8484 Georgia Avenue
Suite 420
Silver Spring, Maryland 20910

1-240-821-1130
1-301-585-1791 Fax
http://www.nasn.org
nasn@nasn.org

National Association of School Nurses

ISSUE BRIEF

School Nurse Role in Education

SCHOOL HEALTH RECORDS

INTRODUCTION

One of the most challenging responsibilities of school nurses is managing the many types of student health records, both paper and electronic. They include documents such as immunization records, screening records, progress notes, physician orders, physical examination records, medication and treatment logs, individualized health care plans, emergency health care plans, third party medical records, consent forms, Medicaid and other insurance billing forms, and flow charts.

School health records provide the mechanism for a school nurse to communicate information to students, families, the school multidisciplinary team, emergency personnel, other health care providers, and school nurse substitutes. Data from school health records can be used to show evidence of student health problems that should be addressed. Data can also be used for evaluation of school health programs, quality assurance, and evaluation of program outcomes. School health records are transferred to new school sites when a student progresses to other buildings within a district or moves to another district.

It is important for school districts to have policies and procedures regarding the types, maintenance, protection, access, retention, destruction, and confidentiality of student health records. State laws and regulations may dictate these policies and procedures (Harrigan, 2002).

As society and the health care system are moving from paper to electronic technology, so too is the school health office. Technology currently in use to receive and transmit student health information includes:

Answering machines
Cellular and cordless telephones
E-mail via computer
Facsimile machine (fax)
Personal digital assistant (PDA)
Voice mail

BACKGROUND

The following areas are considered when examining a school health records system:

- The foundation and rationale for any school health records system should be based on who needs the information, what information they need for the benefit of the student, and who has the expertise to interpret the records (National Association of State School Nurse Consultants, 2000; Schwab & Gelfman, 2001).
- School health records are maintained for purposes of communication, legal evidence, research, education, quality assurance monitoring, statistics, accrediting/licensing, and reimbursement (Schwab, Panettieri, & Bergren, 1998).
- In keeping with medical record requirements, school health records are cumulative and chronological, and errors are not changed, rather recorded on the appropriate date (Schwab & Gelfman, 2001).
- Management of student health records includes their generation, maintenance, protection, disclosure, and destruction. Privacy, confidentiality, and consent are related to record management. (NASN, 2002).

National Association of School Nurses, Inc.
8484 Georgia Avenue
Suite 420
Silver Spring, Maryland 20910

1-240-821-1130
1-301-585-1791 Fax
http://www.nasn.org
nasn@nasn.org

- Paper records are generally kept in locked files. Some school staff will need immediate access to some health information, such as that in emergency care plans, 504 plans, IEPs, and written instructions for care providers (Schwab & Gelfman, 2001).
- Laws governing school health records include the Federal Family Education Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) as well as individual state laws (Bergren, 2001c).
- Computer databases that provide comprehensive student health records and health office logs are available. These are enhanced by nurses using personal computers linked to a network of computers in a building or district. Some school nurses serving multiple buildings use notebook computers to carry from school to school and connect to the network while in each building (Schwab & Gelfman, 2001).
- Fax machines are widely used for transmitting health information. In schools, fax machines streamline accessing such records as immunizations, parental permissions, doctor's orders, clinic records, and pharmacy communications regarding medications (Bergren, 2001b).
- PDAs augment computers by sharing information with them. Some school nurses find PDAs useful for digital data collection and retrieval. Student health data is collected during screenings or accessed during emergencies on the school campus. Information is uploaded onto the school nurse's computer at a later time (Suszka-Hildebrandt, 2001).
- E-mail has become a standard method of communicating in the school setting among staff in and outside of the school district. E-mail is self-documenting and can be retained in a paper or electronic health record at the time of the exchange, eliminating the need for additional notation. The original message is preserved into a file by downloading (Bergren, 2001a).

RATIONALE

Health information in either paper or electronic form must be confidential, secure, accessible only by authorized staff, and protected from loss or destruction (Bergren, 2001b). Information transmitted via the newer technologies is different from paper records in that it can be fairly easily misdirected, intercepted, rerouted, and read by recipients for whom it is not intended (Bergren, 2001a). Because of this, new methods of security must be undertaken.

ROLE OF THE SCHOOL NURSE

School nurses need to address the many issues surrounding student health records in the school health office. Ensuring the security and privacy of both electronic and paper records is of utmost importance. In addition, school nurses must know the relevant federal and state laws, regulations, and guidelines about school health record maintenance, protection, disclosure, and destruction. In addressing these issues, school nurses should evaluate school district policies and procedures, initiate changes if indicated, and educate staff, students, and parents (NASN, 2002).

Electronic records and their transmission pose potential problems that school nurses must address. Special provisions must be established to protect electronic health records and student privacy in the school district. The specific method of storing student health data determines the particular opportunities for abuse of its integrity, so school nurses should be involved on the school district technology team to give input on the need for privacy. Additionally, school nurses should be able to describe the security measures taken by the school district to protect student confidentiality (Schwab & Gelfman, 2001).

Computers have streamlined record keeping for many school nurses. Along with the convenience comes the need to protect both on-screen and stored information. The use of secure passwords, programs to thwart hackers, and screen savers, as well as several areas of access for the student health data base and a policy of never leaving the computer unattended when student health data is accessible or viewable, is necessary for security. Computer software should have over-write protection and multi-level access if multiple health office employees will be entering data (Schwab & Gelfman, 2001).

Informed consent should be obtained before using e-mail for transmissions from the health office. Consent forms should describe the school district security and the expected response time, and explain that transmissions will be placed in the student's health file. The school nurse should assist the school district in establishing a policy for the type of information that may be sent via e-mail. Messages with identifiable health information should be encrypted. Additional security measures regarding e-mail include precautions to prevent misdirected e-mail; password-protected screen savers; never forwarding messages without permission of parent, health provider, or student; and prohibiting sharing of health office

e-mail accounts or passwords with anyone. A confidentiality statement should be written on all e-mail messages involving students (Bergren, 2001a).

When faxing, school nurses should include a cover page that states the confidentiality and limited use of student health information. To protect student confidentiality when faxing documents, the school nurse should fax only when mail will not suffice, transmit only requested information, keep faxes short, and obtain proper authorization. The fax machine should be located in a secure area of the school where it can be monitored by authorized staff. School nurses need to know what their individual state laws specify regarding whether a fax document can be used instead of the original signed paper document for doctors orders and prescriptions (Bergren, 2001b).

School nurses utilizing technology in the health office need to emphasize to their school administrators the importance of keeping student health information secure and private. The school technology team should provide assistance in explaining what is needed and how it can be implemented. Funding for security measures might be obtained through the school parent organization or a community service organization.

REFERENCES

Bergren, M.D. (2001a). The facts about e-mail. *Journal of School Nursing.* 17(5). 274-277.

Bergren, M.D. (2001b). The facts about faxing. *Journal of School Nursing.* 17(4). 210-212.

Bergren, M.D. (2001c). HIPAA hoopla: Privacy and security of identifiable health information. *Journal of School Nursing.* 17(6). 336-341.

Harrigan, J.F. (2002). *Overview of school health services.* Scarborough, ME and Castle Rock, CO. National Association of School Nurses.

National Association of School Nurses. (2002). *Issue brief: Privacy standards for student health records*. Scarborough, ME and Castle Rock, CO: Author. Available at http://www.nasn.org/Default.aspx?tabid=277

National Association of State School Nurse Consultants. (2000). *Position statement: Confidentiality of health information in schoo*l. Available at: http:www.nassnc.org

Schwab, N.C. & Gelfman, M.H.B. (Eds.). (2001). *Legal issues in school health services: A resource for school administrators, school attorneys, school nurses.* North Branch, MN: Sunrise River Press.

Schwab, N.C., Panettieri, M.J., & Bergren, M.D. (1998). *Guidelines for school nursing documentation: Standards, issues, and models* (2nd ed.). Scarborough, ME and Castle Rock, CO. National Association of School Nurses.

Suszka-Hildebrandt, S. (2001). Handheld computing: The next technology frontier for school nurses. *Journal of School Nursing.* 17(2). 98-102.

July 2004

National Association of School Nurses, Inc.
8484 Georgia Avenue
Suite 420
Silver Spring, Maryland 20910

1-240-821-1130
1-301-585-1791 Fax
http://www.nasn.org
nasn@nasn.org

InFocus An in-depth analysis of emerging issues in health in schools.

Respond to topic
Write to us
Archives
View more issues
Readers Respond
Read comments
Communications
E-Journal
News alerts
InFocus Home
CHHCS Home

August 27, 2002

SEND TO A FRIEND

Safeguarding Individual Health Privacy: A Review of HIPAA Regulations

As school opens this fall, providers of health services in schools and educators have special reasons to think about protecting the privacy of the information they maintain about students. Two federal laws, one in effect for many years and the other to be complied with by April 14, 2003, make clear that students and parents must be given access to their own personally identifiable health or education files, but in general the information in those records may not be given to third parties.

The newer of the two laws, the Health Insurance Portability and Accountability Act (HIPAA) was enacted by Congress in 1996 to ensure continued health insurance coverage to persons who move from one job to another and to address the growing problem of health information confidentiality in the electronic era. Final regulations for the privacy part of HIPAA, detailing how health plans, health care clearinghouses, and health care providers must handle personally identifiable information about patients, were published in the *Federal Register* on December 28, 2000, and August 14, 2002, along with a frank acknowledgment from the agency responsible for enforcing them—the HHS Office for Civil Rights (OCR)—that many issues remain unclear and will be addressed in guidance from OCR during coming months.

The other federal law, the Family Educational Rights and Privacy Act (FERPA) is of longer standing and most schools have had some experience with it. Enacted in 1974, FERPA requires that schools that receive federal funding must hold as confidential the information in students' education records, making it available only to parents (or students at age 18) or to those within the school who have "need to know" in order to provide education. FERPA is administered and enforced by the U.S. Department of Education's Office for Civil Rights.

HIPAA and Privacy

The Health Insurance Portability and Accountability Act is a complex law and the privacy regulations issued in December 2000 and August 2002 cover only one part of its requirements. HHS has not yet issued final regs for some other parts of the law, for example, a section of HIPAA that has to do with how health information is transmitted electronically. But the privacy regulations apply so widely that they will affect most agencies and individuals involved in health care.

A little history may help to clarify the privacy regulations. When the Health Insurance Portability and Accountability Act was passed in 1996, Congress specified that if Congress did not enact health care privacy legislation by August 1999, the Secretary of Health and Human Services was to promulgate standards for the privacy of individually identifiable health information. Congress did not pass the required legislation, so HHS issued proposed privacy rules in November 1999, with a period for public comment. There were more than 52,000 comments in response

to the proposal, and in December 2000 HHS issued a final "Privacy Rule." That was just before the end of the Clinton administration, and the new Secretary of Health and Human Services, Tommy Thompson, concluded the next month that his department should review the regs, with attention to their impact on health care activities. This led to a second notice of proposed rule making, in March 2002, followed by another comment period and publication of a second final regulation on August 14, 2002, that leaves some portions of the December 2000 regulations in effect but revises others.

Among changes made in the rules this August were elimination of a requirement that patients must give consent before their personally identifiable health information may be used to provide treatment; restrictions on the use of individually identifiable patient information in the marketing of drugs and drug devices; and assurances from OCR that "incidental" disclosures of protected information that occur as a byproduct of acceptable disclosures are not a violation if the covered entity has applied reasonable safeguards to prevent them from occurring. The August 2002 rule also makes clear that parents are the representatives of their minor children and entitled to receive information about their health care, though the rule defers to state laws that may allow minors to proceed without parental knowledge in some cases, such as testing for HIV.

The Regulations

Here are some important features of the final HIPAA privacy regulations:

Covered Entities
The term "covered entities" is used throughout the privacy regulations to describe the agencies or individuals that are subject to HIPAA's privacy rules. "Covered entities" are defined to include health care plans, health care clearinghouses, and certain health care providers. For example:

- A "health plan" is any individual or group health plan that provides, or pays the cost of, medical care. Examples of health plans are employee benefit plans, health insurance issuers, health maintenance organizations, and the Medicare and Medicaid programs.
- A "health care clearinghouse" is a public or private entity that either processes or facilitates the processing of health information received from other entities.
- A "health care provider" is a provider of medical or health services such as a physician or a hospital, and "any other person or organization who furnishes, bills, or is paid for health care services in the normal course of business."
- "Health care" is defined as "care, services, or supplies related to the health of the individual," including "(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or functions of the body;" and " (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription."

Notice of Privacy Practices
The August 14 final regulations eliminate a provision in earlier regs that would have required covered entities under HIPAA to obtain consent before an individual's personally identifiable health information could be used for treatment, payment, or other health care operations. Instead, the privacy rule now allows providers to use such information without consent, but requires that the provider make a "good faith

effort" to inform the individual patient about the provider's privacy practices, preferably at the time of the first contact. Patients should acknowledge in writing that they've received this information, but the regs do not prescribe the form of the acknowledgment. HHS assures that "Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, would not be considered a violation of the Privacy Rule."

The regs also make clear that while prior consent to use of personally identifiable information for treatment is no longer required under HIPAA, covered entities are free to have their own consent requirements, and the privacy rule does not weaken the operation of state laws that require consent to use or disclose health information.

Minimum Necessary Disclosure
The privacy regulations generally require covered entities to make reasonable efforts to limit the disclosure of protected health information to the minimum necessary to accomplish an intended purpose, such as treating a patient or billing for service.

The regs suggest, for example, that a covered entity should identify the persons or classes of persons within the entity who need access to specific information to carry out their job duties, along with the types of protected health information they need and the conditions appropriate to such access. There may also be disclosures of protected health information to another covered entity, if the initial provider can "reasonably rely" on the other entity's need for the information for treatment, payment, or health care operations. There are some exceptions to the "minimum necessary" standard, such as uses or disclosures that are required by law.

The HHS Office for Civil Rights has promised that as the privacy regulations are implemented, it will monitor the workability of the minimum necessary standard and consider proposing revisions, where appropriate, to ensure that the regulations don't hinder timely access to quality health care.

Incidental Disclosures
One of the points on which the Office for Civil Rights received the most comments in the interim between the December 2000 privacy regulations and the August 14, 2002, regs was whether "incidental disclosures" of protected health information would violate the rules. An incidental disclosure might occur, for example, if a third party overheard a physician discussing a patient in a hospital room or at a nursing station. Because of the concern about this issue, the OCR said in its final regulation that an incidental disclosure does not violate HIPAA if the covered entity has taken reasonable precautions to prevent it from happening.

Implications of the Regulations for School Health Services

Safeguarding Health Information
The protection of individually identifiable health information required by HIPAA extends to all forms of communication, whether oral, written, or electronic. A covered entity is expected to implement technical and physical safeguards to protect such information. For providers of health services in schools, this would seem to imply that computers containing health information, as well as written records, must be in secure locations and access to them restricted. Also, the limitations on incidental disclosure would imply that health care providers must be careful about oral communications, possibly by conducting interviews with students in secure areas—use of an open cubicle from which conversation can easily be heard might not qualify as a "reasonable safeguard" against incidental disclosure,

for example.

Parental Rights
The Department of Health and Human Services has publicized the August 14 HIPAA regulations as providing parents "new rights as the personal representatives of their minor children." Generally, under the rules, parents will be able to access and control health information about their minor children. A minor is defined as an unemancipated child under the age of 18. But there are a limited number of exceptions to the general rule, including:

- Under state or other applicable laws, certain minors may obtain specified health care without parental consent—every state has a law that permits adolescents to be tested for HIV without the consent of a parent, for example. "In these exceptional cases where a minor can obtain a particular health care service without the consent of a parent under state or other applicable law, it is the minor, and not the parent, who may exercise the privacy rights afforded to individuals."
- When state law gives discretion to a health care provider to allow or deny a parent access to a minor's health information, that discretion may be exercised only by a licensed health care professional in the exercise of professional judgment.
- HHS is "neutral" about the right of a parent to health information about his or her minor child in circumstances in which the parent is technically not the personal representative of his or her minor child, particularly where state or other law is silent or unclear on this point. The regulations make no mention of whether non-custodial parents are to be considered "personal representatives" of their minor children for HIPAA purposes.

HIPAA, FERPA, School-Based Health Centers, School Nurses
The HHS Office for Civil Rights concedes that other federal laws with privacy requirements may be a problem in implementing HIPAA—for example, there are questions about how school health care providers will mesh the privacy requirements of HIPAA with the existing Family Educational Rights and Privacy Act (FERPA), which has its own privacy rules.

In a definition of the "protected health information" that is covered by HIPAA, the August 2002 final regulations specify that: "Protected health information excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act." The December 2000 final regulation noted that "individually identifiable health information of students under the age of 18 created by a nurse in a primary or secondary school that receives federal funds and that is subject to FERPA is an education record, but not protected health information."

The Office for Civil Rights commented: "While we strongly believe every individual should have the same level of privacy protection for his/her individually identifiable health information, Congress did not provide us with authority to disturb the scheme it had devised for records maintained by educational institutions and agencies under FERPA. We do not believe Congress intended to amend or preempt FERPA when it enacted HIPAA."

The December 2000 regulations make the point that an "on-site clinic" may qualify as a health care provider, and persons who work in such clinics may also qualify as health care providers. Otherwise, the HIPAA regulations are silent on school-based health centers. In practice, SBHCs sponsored by health care institutions, primarily hospitals, health departments, and community health centers, generally perceive themselves as subject to HIPAA requirements. Unless the SBHC performs school health functions or implements health mandates on behalf of the school board, the

SBHC activities are assumed by the centers to be outside the scope of FERPA.

A point on which the regulations are silent is whether school nurses employed by schools or school systems are subject to HIPAA as "health care providers." However, the 2000 regs make the apparently cautionary point that: "The educational institution or agency that employs a school nurse is subject to our regulation as a health care provider if the school nurse or the school engages in a HIPAA transaction."

This brief overview of the extensive HIPAA privacy regulations is not comprehensive, and is not intended to provide legal advice to school health care providers as to how to comply with HIPAA. We urge school health care providers to seek the advice of their state attorneys general on specific compliance issues.

The Department of Health and Human Services' explanation of the final HIPAA regulations, published August 14, 2002, can be read and downloaded at
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-20554-filed
and also at these web sites:
http://www.hhs.gov/ocr/hipaa
http://www.gpoaccess.gov/fr/index.html

▸ Respond to Topic

Back to top

Section Editor: Martha Dewey Bergren, RN, MS, BC, NCSN

HIPAA Hoopla: Privacy and Security of Identifiable Health Information

Martha Dewey Bergren, RN, MS, BC, NCSN

ABSTRACT: The privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA) are changing the standards for how identifiable health information is handled. This article explains HIPAA and how it interacts with the Family Educational Right to Privacy Act. The advent of HIPAA and the attention given to privacy and security of identifiable health information provides the opportunity for school nurses, school districts, and administrators to revisit and update how they handle student health information. Resources to assist in establishing policies, procedures, and practices that protect student and family health information are identified.

KEY WORDS: confidentiality, Family Educational Right to Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), health records, information systems, privacy, school nursing, security, student records

HIPAA HISTORY

The Health Insurance Portability and Accountability Act (HIPAA) was signed into law on August 21, 1996 (HIPAA, 1996). The Administrative Simplification provisions (Administrative Simplification Regulation Text, 2000) of that act aim to reduce health care costs and administrative burden by standardizing the electronic transmission of administrative and financial transactions. Congress realized that by requiring health care transactions to be conducted electronically, the possibility for abuse or violation of patients' privacy, purposefully or accidentally, would be increased. No federal law existed to protect privacy or confidentiality of health care information. To address this gap, HIPAA directed Congress to pass a medical privacy law by August 21, 1999, or regulations would be established by the Secretary of Health and Human Services (Working Group for Electronic Data Exchange [WEDI], 2001a). Congress missed its own deadline, and the Secretary of Health and Human Services is in the process of writing and publishing regulations.

HIPAA Administrative Simplification regulations fall into the following five categories (WEDI, 2001b):

- Electronic Data Interchange (EDI)—requires a standard format for electronic transfer of information.
- Code Sets—establishes a uniform code set for documenting patient encounters and procedures.
- Identifiers—assigns identification numbers to health care providers, health plans, and employers.
- Security—develops standards for all stages of transmission and storage of health care information to ensure integrity and confidentiality of records before, during, and after electronic transmission.
- Privacy—defines standards for appropriate and inappropriate disclosure of individually identifiable health information and how patient rights are protected.

The regulations are in various stages of development and have different deadlines for implementation. See Table 1 for effective and compliance dates for the various rules. HIPAA regulations cover health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically (e.g., billing and funds transfers; Office of Civil Rights, 2001). The health information HIPAA is designed to protect is defined as individually identifiable health information used or disclosed by a HIPAA covered entity in any

Table 1. Timeline for Compliance Rule

	Effective	Compliance Date
Transaction and code sets rule	August 17, 2000	October 16, 2002
Provider and employer identifiers	Proposed, not final	
Health plan identifier	Not proposed	
Privacy rule	April 14, 2001	April 14, 2003
Security rule	Proposed, not final	

Note. From HIPAAdvisory (2001).

Table 2. Is a School Covered by FERPA or HIPAA?

Public	Private (Federal Funds)	Private (No Federal Funds)	SBHC
FERPA	FERPA	HIPAA	HIPAA

Note. FERPA = Family Educational Right to Privacy Act; HIPAA = Health Insurance Portability and Accountability Act; SBHC = School-based health clinics.

form, whether electronically, on paper, or orally (Office of Civil Rights, 2001). HIPAA imposes civil and criminal penalties for violating these provisions. Civil fines up to $25,000 per standard per year can be imposed on individuals. Criminal penalties can be imposed up to $50,000 and 1 year in prison for obtaining or disclosing protected health information; $100,000 and up to 5 years in prison for obtaining protected health information under false pretenses; and $250,000 and up to 10 years in prison for obtaining or disclosing protected health information with the intent to sell, transfer, or use it for commercial advantage, personal gain, or malicious harm. (U.S. Department of Health and Human Services, 2001).

HIPAA AND SCHOOL HEALTH RECORDS

There have been two sets of privacy rules, the proposed rules and the final revised rules. In the proposed privacy rules issued in November 1999, HIPAA specifically covered health information and health providers in schools (Notice of Proposed Rule Making, 2000). Following an invitation to comment on the rules, 52,000 comments were made addressing issues, problems, and confusion. Many of the comments referred to issues involving school health records. When the final privacy rules were published in December 2000, school health records were excluded from the definition of protected health information with the explanation that Congress protects the privacy of these records through Family Educational Right to Privacy Act (FERPA; Federal Register, 2001). Furthermore, the preamble explained that private schools receiving no federal funds are not subject to FERPA. Therefore, if private schools engage in HIPAA transactions, they are subject to HIPAA regulations. School-based health clinics (SBHC) operate as primary care clinics within schools. SBHC student health records are not considered educational records and are therefore not covered by FERPA and are subject to the HIPAA protections (Table 2).

One question that was not adequately addressed by the final rule or the *First Guidance on the Privacy Rule* (Office of Civil Rights, 2001), published in July 2001, is where schools that engage in electronic transactions for third-party reimbursement fit in the picture. The topic has been discussed on HIPPAAlive Internet listserv. Questions have been posed in professional conferences (J. Schela, personal communication, July 7, 2001). Professional experts in both HIPAA and FERPA have differing opinions (C. Berthelsen, personal communication, July 5, 2001; M. Dougherty, personal communication, June 18, 2001; C. Goldsmith, personal communication, July 6, 2001). The rules are vague and contradictory on this specific set of circumstances and will need to be clarified. Another issue anticipated is that HIPAA-covered entities (physician offices and hospitals) regularly release identifiable data to schools. Will physicians and health care agencies be willing to share protected health data with schools if they cannot ensure the degree of privacy and security required of identifiable health information? If a school cannot ensure that it is HIPAA compliant, are HIPAA-covered entities within their rights to withhold identifiable student health information?

IMPLICATIONS FOR SCHOOL NURSES

Many school districts that bill third parties for reimbursement for nursing services and screenings contract with billing agencies that are covered by HIPAA. The billing agencies must comply with Transaction Standards and the Code Sets for all of their health care clients. Districts that directly bill for reimbursement will want to pay close attention to directives published by the Office of Civil Rights on the Administrative Simplification home page (http://aspe.os.dhhs.gov/admnsimp/).

The Security and Electronic Signature Standards are still in the proposal stage. After the final rules are published, agencies will have 2 years to comply with the standards. Standards for security in school health office practice and for student health software and hardware were addressed for school nurses before the proposed HIPAA regulations (Bergren, 1999a, 1999b, 2001a, 2001b, 2001c; Hedberg, 1997a, 1997b). As a result, most of the commercial personal computer software available for school health offices meet present standards accepted for sensitive health information (Bergren, 2001a) that HIPAA will improve. Unfortu-

Table 3. Comparisons of FERPA and HIPAA

FERPA	HIPAA
Annual notice of rights to parents	Notice of information practices
Right to inspect education records	Right to access information
Right to request amendment to records	Right to request amendment to records
Record access log of who accessed record	Disclosure log of who accessed record
Consent to release information required	Noncoerced consent required
Use information for educational purposes only	Use information for health purposes only
Written criteria for access	Policies and procedures for access
Release only the information necessary	Minimum disclosure
None	Security officer
None	Confidentiality and privacy training
Security requirements: none	Proposed security requirements
	Restrict access
	Encryption
	Auditing software
	Digital signatures
Exceptions to Requiring Consent for Disclosure	**Exceptions to Requiring Consent for Disclosure**
Directory	Directory
Emergencies	Emergencies
Research	Research
Judicial order/subpoena	Judicial order/subpoena
Audit by state/federal officials	Audit by state/federal officials
School officials with "legitimate educational interest"	Quality assurance
	Public health
	Limited law-enforcement activities
	Body identification
Penalties (Goldsmith, 2001)	**Penalties** (USDHHS, 2001)
Institutional sanctions	Security violations: $25,000
Loss of federal funding	Privacy
	Violations with intent: $50,000
	Violations using false pretenses:
	$100,000
	5 years in jail
	Violation for personal or commercial gain:
	$250,000
	10 years in jail

Note. FERPA = Family Educational Right to Privacy Act; HIPAA = Health Insurance Portability and Accountability Act; USDHHS = U.S. Department of Health and Human Services.

nately, far fewer of the school health management information systems that include health modules have integrated these security protections into their products (Bergren, 1999a, 2001a; Hedberg, 1997b). The Final Security Standards may require changes in digital signature capabilities presently not available in school health software. However, school health practitioners and software for personal computers have kept pace with proposed security requirements, such as audit capability and authentication.

The *Standards for Privacy of Individually Identifiable Health Information,* the final privacy rules, must be implemented by April 2003. In reality, knowing whether a school is a HIPAA- or FERPA-covered entity is not essential when preparing for compliance with the privacy provisions. The privacy standards of identifiable information proposed by HIPAA and FERPA are so similar that compliance with one federal law prepares the school health office information caretaker for compliance with the other. In addition, the confidentiality requirements of IDEA (Individuals with Disabilities Education Act), which affects a large number of students with medical diagnoses, even exceed those of FERPA (Gelfman & Schwab, 2001), necessitating even less of an information culture change. Table 3 presents a comparison of HIPAA and FERPA requirements.

Most of what HIPAA and FERPA require for privacy protection are not technological gizmos or enhanced software, but an organizational commitment to the principle that students and their families have a right to personal data privacy and security. An organization that values the right to privacy will ensure that the following steps are taken: (a) post the *Notice of Information Practices* to inform students and their families how their health information is handled; (b) offer confidentiality and privacy training for all employees on the importance of protecting identifiable information; (c) provide only the minimum information necessary when releasing data; (d) assign a licensed professional as accountable for all health information security; (e) and establish policies and procedures for the handling of information.

Parents and students are becoming more wary of divulging confidential health information (Cheng, Savageau, Sattler, & DeWitt, 1993; Ford, Bearman, & Moody, 1999). The Association of American Physicians and Surgeons (AAPS) released results from a survey showing that patients withhold information and physicians lie because they do not trust that health information will be kept confidential (AAPS, 2001). The AAPS found that 87% of physicians reported that patients had requested information be kept out of the their record. To ensure that schools are given health information needed to protect students' safety and assist in designing valid educational and health care plans, school nurses and school districts must be able to demonstrate that every precaution is taken to keep sensitive information confidential and secure. Students and families may not make a distinction between HIPAA or FERPA protections, but they will expect that schools exercise the degree of privacy and security protections that health information warrants.

Regardless of HIPAA, FERPA, or state laws, school nurses are licensed professionals, ethically bound by the *Code of Ethics for Nurses* (American Nurses Association, 2001) and the *Scope and Standards of Professional School Nursing Practice* (National Association of School Nurses & American Nurses Association, 2001) to protect clients' confidentiality and privacy. In a court of law, school nurses are held to professional ethical standards. As health professionals, school nurses are expected to "do no harm. A great deal of harm can be inflicted on a student and a family by divulging or not protecting private health information" (Federal Register, 2000). It is the right of the client, not the health professional, to determine what information can be disclosed.

Since 1974, FERPA has been the federal law governing the right to privacy of educational information. Unfortunately, not all schools have policies and procedures that reflect best information practices under FERPA (Zaiger, 2000). FERPA allows educational records to be accessed by those with a "legitimate educational interest." However, many schools have not defined who this includes or excludes, how much of a given record can be accessed, or who can make decisions in this regard. In many cases, schools need to make substantial changes to adhere to the spirit of FERPA (Zaiger, 2000). Even the most rudimentary protections, such as locked file cabinets and locked doors, are not used in some schools. Many school districts do not have identifiable information policies. Other districts have policies and procedures that are outdated or unknown to those employees responsible for maintaining and accessing data. Regardless of whether a school is ultimately covered HIPAA or FERPA, some schools and school nurses have a lot of work to do to become compliant with the new standards.

Table 4. Resources for Health Information Privacy and Security

Articles: *Journal of School Nursing* Information Technology columns

- The Facts about E-mail (October 2001)
- The Facts about Faxing (August 2001)
- Legal Issues: Office Management (August 1999)
- Criteria for Software Evaluation: Legal Issues (April 1999)

Books

- Schwab, N., & Gelfman, M. (2001). Order by phone: (800) 895-4585.
- Schwab, N., Panettieri, M. J., & Bergren, M. D. (1998). Order from www.nasn.org.

Web Sites

- Administrative simplification: http://aspe.os.dhhs.gov/admnsimp/
- American Health Information Management Association—Practice Briefs: www.ahima.org
- American Medical Informatiocs Association: www.amia.org
- Family Educational Right to Privacy Act: http://www.cpsr.org/cpsr/privacy/ssn/ferpa.buckley.html
- Health Insurance Portability and Accountability Act (HIPAA): http://aspe.os.dhhs.gov/admnsimp/pl104191.htm
- HIPAA Advisory: www.hipaadvisory.com
- Martha Dewey Bergren's Web Links: http://www.usinternet.com/users/bergren/legal./htm
- National Association of School Nurse Consultants: http://lserver.aea14.k12.ia.us/swp/tadkins/nassnc/nassnc.html
- *The state of health privacy: An uneven terrain/A comprehensive survey of state health privacy statutes.* The Health Privacy Project: http://www.healthprivacy.org/resources/statereports/contents.html

WHERE TO START?

The most important thing to do is to get started—don't wait for final regulations to be clarified or for a lawsuit to occur. School nurses educated in the special protection accorded to health data are the most qualified school employee to coordinate and advocate for district health privacy standards (Bergren, 2001a). Many resources published recently assist schools with revisions of their health information practices. Table 4 lists relevant books, articles, and Web sites on this topic. The National Task Force on Confidential Student Health Information published *Guidelines for Protecting Confidential Student Health Information* (2000) to assist school health professionals and educators in developing policies and procedures surrounding confidentiality of student health information. These guidelines provide a starting point for the analysis of the discrepancy between a school or district's present practices and the proposed best practices (Table 5). The task force identifies strategies for the implementation of each guideline and provides examples of letters and policies. A more comprehensive reference is *Legal Issues in Schools Health Services: A Resource for School Administrators, School Attorneys and Schools Nurses* (Schwab & Gelfman, 2001). This volume provides an in-depth review of many student data issues, including case law, FERPA, and requirements for electronic student health records.

Table 5. Recommended Guidelines for Protecting Confidential Student Health Information

1. Distinguish student health information from other types of school records.
2. Extend to school health records the same protections granted medical records by federal and state law.
3. Establish uniform standards for collecting and recording student health information.
4. Establish district policies and standard procedures for protecting confidentiality during creation, storage, transfer, and destruction of student health records.
5. Require written, informed consent from parents and, when appropriate, the student, to release medical and psychiatric diagnoses to other school personnel.
6. Limit the disclosure of confidential health information within the school to information necessary to benefit the student's health or education.
7. Establish policies and standard procedures for requesting needed health information from outside sources and for releasing confidential health information, with parent consent, to outside agencies and individuals.
8. Provide regular periodic training for all new school staff, contracted service providers, substitute teachers, and school volunteers concerning the district's policies and procedures for protecting confidentiality.

Note. From National Task Force on Confidential Student Health Information (2000), p. 34.

SUMMARY

The advent of HIPAA and the attention given to the privacy and security of identifiable health information provides the opportunity for school nurses, school districts. and administrators to revisit and update how they handle student health information. Whether a district is covered by HIPAA or FERPA, HIPAA sets a higher standard for privacy and security in identifiable health information. School nurses need to update their knowledge with recent publications and guidelines and then provide guidance to their school district in revising polices and procedures related to the handling of student health information.

REFERENCES

Administrative Simplification Regulation Text. (2000, December 20). Retrieved April 2, 2001 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/final/PvcTxt01.htm

American Nurses Association. (2001). Code of Ethics for Nurses [draft]. Retrieved August 5, 2001 from the World Wide Web: http://www.nursingworld.org/ethics/chcode10.htm

Association of American Physicians and Surgeons. (2001, July 31). *New poll. Doctors lie to protect patient's privacy*: Retrieved August 4, 2001 from the World Wide Web: from http://www.aapsonline.org/aaps/

Bergren, M. D. (2001a). Electronic records and technology. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys.* (pp. 317–332) North Branch, MN: Sunrise River Press.

Bergren, M. D. (2001b). The facts about email. *Journal of School Nursing, 17*(5), 274–277.

Bergren, M. D. (2001c). The facts about faxing. *Journal of School Nursing, 17*(4), 210–212.

Bergren, M. D. (1999a). Criteria for software evaluation: Legal issues *Journal of School Nursing, 15*(2), 32–33.

Bergren, M. D. (1999b). Legal issues: Office management practices. *Journal of School Nursing, 15*(3), 40–41.

Cheng, T. L., Savageau, J. A., Sattler, A. L., & DeWitt, T. G. (1993). Confidentiality in health care: A survey of knowledge, perceptions, and attitudes among high school students. *JAMA, 269,* 1404–1407.

Federal Register. (2000, December 28). *Section-by-section discussion of comments. Standards for Privacy of Individually Identifiable Health Information* [Electronic version], 65 (250). Retrieved June 15, 2001 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/FINAL/pvcpre03.htm

Ford, C. A., Bearman, P. S., & Moody, J. (1999). Foregone health care among adolescents. *JAMA, 282,* 2227–2234.

Gelfman, M. H. B., & Schwab, N. C. (2001). School health records and documentation. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 297–316). North Branch, MN: Sunrise River Press.

Goldsmith, C. E. (2001). *HIPAA and FERPA? (Or Is Your HIPAA Eating Your FERPA?),* Educause Information Resources Library. Retrieved July 4, 2001 from the World Wide Web: http://www.educause.edu/asp/doclib/abstract.asp?ID=NET0013

Health Insurance Portability and Accountability Act (HIPAA). (1996). Retrieved July 7, 1999 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/pl104191.htm

Hedberg, S. M. (1997a). A comparative analysis of PC-based school health software *Journal of School Nursing, 13*(1), 2–9.

Hedberg, S. M. (1997b). Administrative student information management software (AS/IMS) for school nurse record keeping and reporting. *Journal of School Nursing, 13*(2), 40–48.

HIPAAdvisory. (2001). *HIPAA primer.* Montgomery Village, MD: Phoenix Health Systems. Retrieved July, 26, 2001 from the World Wide Web: http://www.hipaadvisory.com/regs/HIPAAprimer1.htm

National Association of School Nurses & American Nurses Association. (2001). *Scope and Standards of Professional School Nursing Practice.* Washington, DC: American Nurses Publishing.

National Task Force on Confidential Student Health Information. (2000). *Guidelines for protecting confidential student health information.* Kent, OH: American School Health Association.

Notice of Proposed Rule Making. (1999). *Standards for privacy of individually identifiable health information.* Retrieved June 15, 2001 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/nprm/pvclist.htm

Office of Civil Rights. (2001, July 6). *First guidance on the final privacy rule.* Retrieved July 6, 2001 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/final/pvcguide1.htm

Schwab, N., & Gelfman, M. (Eds.). (2001). *Legal issues in school health services: A resource for school nurses, administrators and attorneys.* North Branch, MN: Sunrise River Press.

Schwab, N., Panettieri, M. J., & Bergren, M. D. (1998). *Guidelines for school nursing documentation: Standards, issues, and Models.* Scarborough, ME: National Association of School Nurses.

U.S. Department of Health and Human Services. (2001, May 9). *HHS Fact Sheet. Protecting the privacy of patients' health information.* Retrieved July 26, 2001 from the World Wide Web: http://aspe.os.dhhs.gov/admnsimp/final/pvcfact2.htm

Workgroup for Electronic Data Interchange—Strategic National Implementation Process. (2001a). *Security and Privacy Work-*

group white papers draft, July 2001. Reston, VA: Workgroup for Electronic Data Exchange. Retrieved August 4, 2001 from the World Wide Web: http://snip.wedi.org/public/articles/s&p_version3.0.pdf

Workgroup for Electronic Data Interchange—Strategic National Implementation Process. (2001b). *What is HIPAA? Overview of the legislation*. Retrieved August 4, 2001 from the World Wide Web: http://snip.wedi.org/public/articles/details.cfm?lzid=18

Zaiger, D. S. (2000). National Task Force on Confidential Student Health Information Offers Guidelines. *NASN Newsletter, 15*(2), 1, 11.

Section Coeditors: Katherine Pohlman, RN, MS, JD
Nadine Schwab, RN, MPH, PNP, NCSN, FNASN

Records—The Achilles' Heel of School Nursing: Answers to Bothersome Questions

Nadine C. Schwab, RN, MPH, PNP, NCSN, FNASN; and Katherine J. Pohlman, RN, MS, JD

ABSTRACT: This article addresses practice issues related to school health records and school nursing documentation. Because the issues have been posed by practicing school nurses, the article is in Question and Answer (Q&A) format. Specifically, the questions addressed concern the following: ownership and storage location of student health records when the school nurse is contracted from a community health agency rather than employed by the school district; documentation of sensitive health information on students' health records including pregnancy, drug and alcohol abuse, mental illness, history of suicide attempt, and HIV status; inclusion of medical diagnoses and current medications on a student's Individual Educational Program (IEP); and Health Insurance Portability and Accountability Act (HIPAA)-permitted communications *between* school nurses and health care providers related to students' immunization status, *regarding* a student's treatment needs in school, and *via* facsimile (e.g., records of immunizations, completed physical examination forms, and medical orders). HIPAA, the Family Educational Records and Privacy Act (FERPA), and other laws are addressed as appropriate, and resources for obtaining further information are included.

KEY WORDS: confidentiality, documentation, education records, Family Educational Records and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), nursing records, privacy, records, school health records

INTRODUCTION

In April 2003, this Section printed NASN's *Issue Brief* on "Privacy Standards for Student Health Records," which was first posted on the NASN Web site in December 2002. Since that time, additional questions on documentation and confidentiality have been submitted for inclusion in this column, further guidance regarding the impact of the Health Insurance Portability and Accountability Act (HIPAA) (1996) on schools and its interface with the Family Educational Rights and Privacy Act (FERPA) (1974) has been made available, and NASN's *Issue Brief* has been updated (April 2004). For these reasons, and because implementation of the HIPAA Privacy Rule (2000) has created significant confusion among school nurses and health care providers, this column addresses several reader questions on records, documentation, and the HIPAA Privacy Rule.

Because this column can only provide limited information related to these complicated laws and topics, readers are encouraged to pursue additional information from

- Specific references cited in the article.
- NASN's updated *Issue Brief* on "Privacy Standards for Student Health Records" (2004).
- The *Journal of School Nursing* article "HIPAA–FERPA Revisited," by Martha Dewey Bergren (2004).
- The "HIPAA–FERPA" Resources section of the NASN Web site at www.nasn.org. This members-only section provides documents and publications addressing HIPAA and FERPA, as well as links to additional Internet resources.
- A new publication of the National Forum on Education Statistics (2004) that is targeted to state

and local education agencies and provides guidelines related to protecting the privacy of student information.

Readers who seek a formal legal opinion regarding the interpretation of a specific law should consult an attorney knowledgeable about these issues.

QUESTIONS AND ANSWERS

Q: *I am a school nurse who is employed by a local community health clinic to provide school health services for the community's only public school. I often generate files on my school computer on individual students, stating a student's health concerns, assessments, plan of treatment, and follow-up care. I am confused about what to do with these records, feeling reluctant to keep them in the student's education file because I am not comfortable with this sensitive information being thrown in with other education records. What should I be doing with these records? Should I include them in the patient's file at the community clinic that employs me, or is this information that belongs in the student's individual educational file, or both?*

A: First, it is essential to determine what federal privacy law(s) cover the records the school nurse is generating on the school's computer. Based on the description of the records and the wording of the question, the following assumptions are made:

- As a public school, this nurse's school receives federal funding; therefore, its student records, for the purposes of privacy, are covered by FERPA, not the Privacy Rule of HIPAA.
- The school district chose to contract with the community health center to provide its school health (nursing) services rather than provide a staff school nurse through its own budget. This contract may be a written or unwritten agreement between the two agencies.
- The services described in the question, "school health services," are provided because the students are in school. These services include, for example, assessment of illnesses and injuries that occur in school, development of emergency care plans for students with special needs, and provision of pertinent health data to special education and Section 504 planning teams. The services described are not "pediatric primary health care services," which are like those delivered to patients at the community health center or in a school-based health center, such as routine physical examinations and medical diagnostic and treatment services.

Based on these assumptions, the records this nurse generates are educational records covered by FERPA, not health records covered by the HIPAA Privacy Rule. FERPA defines "Education Records" as "any records containing personally identifiable information about a student that is maintained by a school, its staff members, or contracted employees" (20 U.S.C. 1232g(a)(4); 34 C.F.R. part 99.3, 1974).

The best thing "to do with these records" is to initiate a school health records committee in the school to develop and improve policies and procedures that specifically address the internal release of student health data "for legitimate educational interests" and the privacy and security of student health records. Internal release refers to sharing student health data with other school officials (e.g., teachers, administrators, school mental health professionals, paraprofessionals). External release of student health information may also need to be addressed by such a committee but is not the subject of this question and answer.

Committee participants should include, among others, the school nurse, the district's records administrator, other school health professionals, a family representative, and, if available, a records expert or HIPAA privacy administrator from the community health center. Although the community health center's expert on records is unlikely to be familiar with FERPA and education records requirements, that expert should be quite familiar with HIPAA and health records requirements. On the basis of that knowledge the expert should be able to share pertinent HIPAA privacy standards that might be applicable and adaptable to FERPA-based procedures for creating, using, limiting, sharing, and protecting student health records. An upcoming publication of the American School Health Association, *Protecting and Sharing Student Health Information: Guidelines for Developing School District Policies and Procedures* (Schwab et al., in press), will provide excellent guidance for school districts in this practice area.

Because these records are education records, they belong to and in the school. As a contracted employee, the nurse must follow the policies and procedures of the school district in terms of the creation, use, storage, and release of the students' records. Student records are not secure when they are carried from place to place or downloaded on another agency's computer or a home computer. Nor can they be released to a community agency without the informed consent of the parent or student if the student is 18 years old or older. This information belongs in a separate school health file that is secure and separate from the general educational file, although the general file should note the existence of the health file.

Because these are education records covered by FERPA, they should remain in the school. They must be stored in a secure, locked file cabinet or, for electronic records, with proper security provisions (for further information, see Bergren, 2000, 2001) and should be maintained and stored in a location separate from the students' other educational files, preferably in the health office. Only the school nurse or, if absent, the school nurse's substitute, nurse supervisor, or princi-

pal (and the latter only under certain circumstances as specified in the school district's administrative procedures) should have access to the students' entire health records. Of course, portions of students' health records, such as emergency care plans and medication plans for in-school medication administration, should be immediately accessible to those who require the information in order to care for the student and carry out their educational responsibilities. The clinical supervisor of the school nurse should also have access to the records in order to provide appropriate supervision and consultation to the school nurse. Such access should be covered in the contract between the school district and the community agency and should be strictly limited to the direct clinical supervisor for supervision purposes. Review of student records for supervision purposes should take place in the school building so that the records are not removed from the school that the student attends.

Finally, it should be clarified that, if the school nurse is generating electronic student health records that are transmitted across the Internet for billing or other purposes, then the student records being transmitted may be covered by the HIPAA Transaction Rule. Nevertheless, for privacy considerations, they are still covered by FERPA, not the HIPAA Privacy Rule.

Q: *Should the health record include information about a student's pregnancy? What about a student's drug and alcohol use? What about mental illness—particularly a prior suicide attempt? Should records about HIV status be kept separate from the education record? Should health information, such as diagnoses and current medications, be included on an IEP?*

A: As discussed in the answer to the previous question, FERPA (also known as the Buckley Amendment) protects the privacy of personally identifiable information about students. It establishes standards for access to education records, which are defined to include school health records. (For an excellent discussion of this law and the legal issues relative to the school health records, see Gelfman, 2001, pp. 297–316). Some states and school districts have passed laws that define the school health record as an education record subject to FERPA and the nursing record as a separate medical record controlled by individual state laws. Similarly, records of a school-based health center operated not by the school district, but by a separate agency or entity to provide pediatric primary health care services (see last bullet in previous answer), are medical records rather than education records.

FERPA defines personal notes created and maintained privately by a school staff member as outside the definition of education records (Gelfman, 2001, p. 300). To qualify as personal notes, such records may not be shared with anyone other than the person's temporary substitute, such as the school nurse's health aide. Although FERPA permits professionals to create and maintain personal records, these are intended as simple memory-joggers for the individual making the note. A school nurse should not use personal records to document information that properly belongs in the school health record or nursing record. If the nurse resorts to personal notes to document such information based upon a concern that the health record will be reviewed by individuals without a "legitimate educational interest" in the information, he or she should address the inadequacy of the district's policies and procedures and work with administration to revise those policies and procedures to protect the confidentiality of students' health information.

Because FERPA permits education records to be shared internally with school officials who have a "legitimate educational interest," it also permits school districts to separately define that interest for each type of school record. As discussed previously, school district policies and procedures should narrowly define that interest for school health records according to those who "need to know to benefit the student," and those who "have the expertise to understand and interpret the health information" (Gelfman, 2001, p. 299). Each type of record that contains personally identifiable health information should be addressed in district procedures individually, such as the cumulative (summary) health record, nursing process notes, individualized health care plans, emergency plans, and medication administration orders.

Parents and students share personal health data with the school nurse because the nurse functions as a student support, health care professional. Only the school nurse or a knowledgeable supervisor or nurse substitute should determine what and how much of the student's health record should be shared with each member of the school (National Task Force on Confidential Student Health Information, 2000). In general, the nurse can and should share as much of that information as is needed by other school officials to provide students with safe and appropriate educational programs. For example, the school nurse may share with the school principal information about the special health care needs of all students in the building, except that the school nurse may not share information, such as HIV status, that is protected by separate specific state laws that require written informed consent. For teachers, the school nurse generally needs to share only *functional* health information about students in the teacher's class so that the teacher is prepared to provide for students' special needs and to recognize and respond competently to potential emergencies. On the other hand, the nurse should never share with another staff member more than that individual needs to know in order to fulfill his or her responsibilities to the student and school district. For further discussion of confidentiality issues in schools, see Schwab and Gelfman (2001).

The principles previously discussed form the basis for answers to the specific inquiries in this question.

Furthermore, the following responses are based on the following assumptions:

- The school district has adequate policies and procedures for securing and protecting student health records.
- The school nurse is the custodian of the student's health record.
- The school nurse determines what can be released from the record and to whom.
- State law in this situation does not require parental consent for the minor to seek and consent to health care for a pregnancy.

If the student is receiving school health services related to her pregnancy, then the school nurse should document that fact in the health record. Although laws may differ from state to state, most support a minor student's right to keep pregnancy-related information confidential, even from her parent, except in life-threatening emergencies. To properly care for the student and protect her health, documentation using the nursing process is essential for ongoing care, in the event of an emergency and to assist a substitute nurse in providing appropriate care. In general, sharing that information with another staff member or a parent, such as the school social worker, would require consent of the student unless the student is not seeking appropriate medical care or is not behaving in a competent manner. A conflict may arise if the student does have a right to independently consent to health care for the pregnancy, a referral is noted in the nurse's progress notes, and the parents at a future date request copies of the record. A discussion of potential solutions to this dilemma can be found in Schwab and Gelfman, 2001, pp. 282–283.

The same principles apply to information about a student's mental health or prior suicide attempt. Information that the school nurse has received relative to the student's mental health, including past history, may be recorded in the school health record, but shared only as necessary in caring for the student and enabling other school professionals to carry out their educational responsibilities.

In determining how to handle information related to drugs and alcohol, the school nurse must keep in mind the nature of the information (related to use vs. treatment), as well as how the information was received (Cohn, 2001). Both federal and state law protects the confidentiality of health information related to drug and alcohol evaluation and treatment, but not use. If a student seeks a referral from a school nurse for drug or alcohol treatment, that information is protected by federal and state law and should be recorded in the school health record if the assumptions stated previously in this answer are true (i.e., the record will be properly maintained, used, protected, secured, and released, and the school nurse is custodian of the record). It is important for the nurse to demonstrate the steps taken to intervene and support the student in obtaining treatment, whether through a Student Assistance Program or a community drug treatment facility. Again, documentation of the nurse's assessments, diagnoses, plan, interventions, expected outcomes, and ongoing evaluation of the effectiveness of the plan and interventions is essential to safe care and critical problem solving.

Because information about HIV testing and results is regulated individually by the states, the laws may differ in various school districts. Most states have specific laws that address HIV-related information; general consent and confidentiality statutes do not usually control. If a student is regularly receiving health care services in school related to a positive HIV status or for AIDS, then that student will likely need to have on file special written permission from the parent, the student, or both, for disclosure of the student's HIV status to the school health professional who has a need to know in order to provide the services. If the student is not receiving such services in school, there is generally no legitimate need for anyone to know or document the student's HIV status. The HIV status of a student should rarely, if ever, be documented unless and until the protection, security, and appropriate limited use of such a record can be assured, and the documentation is only for the benefit of the student.

Health information may be relevant to the planning of special education and Section 504 teams, but summary information is usually sufficient to achieve the teams' purposes. Rather than include specific medical diagnoses, the school health professional should make available functional diagnoses wherever and whenever possible. Similarly, specific information about medications (e.g., drug names and dosages) should not be necessary. It may be appropriate, however, to share that the student is taking medication, therapeutic and side effects that may affect learning or behavior in the classroom, and potentially dangerous untoward effects. Team members who have responsibility for planning and providing educational services for the student may need such information to properly execute their responsibilities on behalf of the student.

Q: *May physicians share health information with other health care providers who are not considered covered entities under HIPAA guidelines?*

A: Yes, they may in certain circumstances but do not have to. The HIPAA Privacy Rule permits health care providers who are covered by HIPAA to share "protected health information" (individually identifiable health information that is covered by HIPAA) with other health care providers, whether or not the others are also covered by HIPAA (Bergren, 2003; Campanelli et al., 2003; NASN, 2004). This is true under two circumstances, not including emergencies and other exceptions to the Rule.

First, covered providers (e.g., physicians) may re-

lease protected health information (PHI) to other health care providers who meet the definition of a "health care provider" under HIPAA regulations if they are doing so for treatment reasons. School nurses fit within this definition. Therefore, without written authorization from the parent, a pediatrician *is permitted* to discuss with a school nurse his or her order for medication for a student or medical directions for management of a student's insulin pump so that the nurse can safely carry out the medical orders and develop an appropriate individualized health care plan for the student in school. The same pediatrician, however, *is prohibited* under HIPAA from sharing that treatment information with the school principal or another school official who is not a health care provider, at least without the written authorization of the parent.

It is important to note that, although the Privacy Rule permits health care providers to share PHI for treatment purposes with other health care providers who are not covered by HIPAA, the Rule *does not require* them to do so. Therefore, physicians and other health care providers may decline to communicate with the school nurse, even for treatment reasons, without the written authorization of the parent on a HIPAA-compliant authorization form. Many health care providers remain unclear about their ability under HIPAA to communicate for treatment purposes with noncovered health care providers. Furthermore, written confirmation of this interpretation by an official of the Office of Civil Rights of the U.S. Department of Health and Human Services seems unlikely in the near future (M. Rubin, American School Health Association, personal communication, March 1, 2004).

Second, health care providers covered by HIPAA can release PHI about a student when they have the written authorization of the parent, a student 18 years old or older, or, in the case of a minor, a student who is authorized under state or federal law to consent to the health care in question.

Q: *A parent recently brought in an over-the-counter medication for me (a school nurse) to give a student at lunchtime, but she did not bring along a doctor's order. She called her pediatrician to have him fax me an order and was told that, due to HIPAA laws, they could not fax anything anymore. Is that correct? If not, is there something in writing that I can share with the doctor's office.*

A: No, it is not correct. Doctors' offices can fax to school nurses, as long as privacy protections are maintained. Unfortunately, some doctors' offices have misinterpreted the HIPAA Privacy Rule in this regard. For a written resource, physicians can be directed to the website of the U.S. Department of Health and Human Services (USDHHS), Office of Civil Rights (OCR) at http://www.hhs.gov/ocr/hipaa/. Once there, click on "FAQs" and search for "fax" or "faxing." The FAQ reads:

May a doctor fax, e-mail, or discuss over the phone patient health information for treatment purposes?

Question:

Does the HIPAA Privacy Rule permit a doctor, laboratory, or other health care provider to share patient health information for treatment purposes by fax, e-mail, or over the phone?

Answer:

Yes. The Privacy Rule allows covered health care providers to share protected health information for treatment purposes without patient authorization, as long as they use reasonable safeguards when doing so. These treatment communications may occur orally or in writing, by phone, fax, e-mail, or otherwise.

For example:

—A laboratory may fax, or communicate over the phone, a patient's medical test results to a physician.
—A physician may mail or fax a copy of a patient's medical record to a specialist who intends to treat the patient.
—A hospital may fax a patient's health care instructions to a nursing home to which the patient is to be transferred.
—A doctor may discuss a patient's condition over the phone with an emergency room physician who is providing the patient with emergency care.
—A doctor may orally discuss a patient's treatment regimen with a nurse who will be involved in the patient's care.
—A physician may consult with another physician by e-mail about a patient's condition.
—A hospital may share an organ donor's medical information with another hospital treating the organ recipient.

The Privacy Rule requires that covered health care providers apply reasonable safeguards when making these communications to protect the information from inappropriate use or disclosure. These safeguards may vary depending on the mode of communication used. For example, when faxing protected health information to a telephone number that is not regularly used, a reasonable safeguard may involve a provider first confirming the fax number with the intended recipient. Similarly, a covered entity may preprogram frequently used numbers directly into the fax machine to avoid misdirecting the information. When discussing patient health information orally with another provider in proximity of others, a doctor may be able to reasonably safeguard the information by lowering his or her voice (USDHHS-OCR, 2004).

Many physicians and their office staff believe that they cannot fax to school nurses who are not HIPAA-covered entities or, in some cases, they choose not to. School nurses need to educate their physician colleagues. In addition, school nurse managers should budget to obtain fax machines for the school district's health offices so that incoming faxes are secure and physician offices can be informed of the secure nature of the fax machine. Until that is feasible, the doctor's office can call nurses first to alert them to wait by the fax machine or make other arrangements.

Q: *Can physicians share immunization data with school nurses by fax or by telephone in order to expedite the entry into school of these students?*

A: At the time this article is going to print, there

is general consensus among experts in school health and many public health officials that physicians may share immunization data with schools when the immunizations are required by state law for school attendance. Most experts agree that such communication falls within the public health exceptions to nondisclosure requirements, as defined within the HIPAA Privacy Rule (see Centers for Disease Control, 2003). Some states have provided clear guidelines to that effect, such as Massachusetts (http://www.state.ma.us/dph/cdc/epii/imm/school_req/hipaa_imm.htm) and Colorado (http://www.cdphe.state.co.us/HIPAA/ColoradoLawandHIPAAReImmunizationsrev.pdf).

Other states, such as Connecticut, have passed state laws to permit such sharing. As of April 15, 2004, some states still had no specific guidance on this issue, and the USDHHS-OCR had not yet issued written clarification on this issue. However, recommendations on HIPAA implementation issues made by the National Committee on Vital Health Statistics in a letter dated March 5, 2004, to the Secretary of the USDHHS included the following: "HHS should regard disclosure of immunization information to schools as a public health disclosure, thereby permitting providers to disclose this information to school officials without an authorization" (Lumpkin, 2004).

Because the USDHHS periodically releases notices clarifying HIPAA, it is important that school nurses ensure that their understanding of the law is current. School nurses should also check their state laws for guidance on these issues.

REFERENCES

Bergren, M. D. (2000). *Legal aspects of electronic health information*, Retrieved March 1, 2004, from http://www.usinternet.com/users/bergren/legal.htm

Bergren, M. D. (2001). Electronic records and technology. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 317–334). North Branch, MN: Sunrise River Press.

Bergren, M. D. (2003). National conference on HIPAA Privacy Rule. *NASN Newsletter, 18*(4), 20–22. Available at: www.nasn.org

Bergren, M. D. (2004) HIPAA—FERPA revisited. *Journal of School Nursing, 20*(2), 107–112.

Campanelli, R., McAndrew, S. D., Altarescu, L., Heide, C., Mayer, D., Kaminsky, S., & Seeger, R. K. (2003, March). Presented at the National Conference on the HIPAA Privacy Rule. Chicago, IL: U.S. Department of Health and Human Services. (video [$50] available from Workgroup for Electronic Data Interchange, 12020 Sunrise Valley Dr., Suite 100, Reston, VA 20191 703-391-2743).

Centers for Disease Control, USDHHS. (2003, April). HIPAA Privacy Rule and public health: Guidance from CDC and the U.S. Department of Health and Human Services. *MMWR, 52*(Suppl), 1–20. Retrieved May 12, 2004, from http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm

Cohn, S. (with Gelfman, M. & Schwab, N.). (2001). Adolescent issues and rights of minors. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services* (pp. 231–260). North Branch, MN: Sunrise River Press.

Confidentiality of Alcohol and Drug Abuse Treatment Records, 42 U.S.C. § 290dd-2; Regulations at 42 C.F.R. pt. 2.

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; Regulations at 34 C.F.R. pt. 99 (1974).

Gelfman, M. (with Schwab, N.). (2001). School health records and documentation. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 297–316). North Branch, MN: Sunrise River Press.

Health Insurance Portability and Accountability Act, Pub. L. No. 104–191 (1996). Available at http://cms.hhs.gov/hipaa/hipaa2/default.asp

HIPAA Privacy Rule, Regulations at 45 C.F.R. pts. 160 and 164 (2000).

Lumpkin, J. R. (2004, March 5). Letter to The Honorable Tommy G. Thompson, Secretary, U.S. Department of Health and Human Services from the National Committee on Vital and Health Statistics. Retrieved April 13, 2004, from http://www.ncvhs.hhs.gov/040305l2.htm

National Association of School Nurses (NASN). (2004). *Issue brief: Privacy standards for student health records* [revised]. Available at: http://www.nasn.org/briefs/hipaa.htm

National Forum on Education Statistics. (2004). *Forum guide to protecting the privacy of student information: State and local education agencies* (NCES 2004–330). Washington, DC: National Center for Education Statistics. Retrieved May 13, 2004, at http://nces.ed.gov/pubs2004/2004330.pdf

National Task Force on Confidential Student Health Information. (2000). *Guidelines for protecting confidential student health information*. Kent OH: American School Health Association.

Schwab, N., & Gelfman, M. (2001). Confidentiality: Principles and practice issues. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 261–295). North Branch, MN: Sunrise River Press.

Schwab, N., Rubin, M., Maire, J. A., Gelfman, M., Bergren, M. D., Mazyck, D. & Hine, B. (in press). *Protecting and sharing student health information: Guidelines for developing school district policies and procedures*. Kent, OH: American School Health Association.

NOTE

Readers are invited to send clearly stated, brief questions, dilemmas, or issues on legal or ethical topics to NASN by e-mail at *nasn@nasn.org*. The section editors cannot respond to individual e-mails, but will select the most appropriate submissions and feature them in future section articles.

Section Editor: Martha Dewey Bergren, RN, DNS, NCSN, BC, FNASN

HIPAA-FERPA REVISITED

Martha Dewey Bergren, RN, DNS, NCSN, BC, FNASN

ABSTRACT: Since April 2003, school nurse and school health officials have been clamoring for guidance on how the Health Insurance Portability and Accountability Act (HIPAA) and the Family Education Rights Privacy Act (FERPA) interface in the school environment. This article provides an up-to-date explanation of how school health leaders are interpreting the practical implications of the federal privacy laws. With the attention and scrutiny given to personally identifiable health information in all settings, it is imperative for school nurses, school administrators, and school attorneys to revisit policies and procedures for protecting the privacy of student and family health information in schools.

KEY WORDS: confidentiality, elementary schools, employee health, Family Education Rights Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), health records, information systems, privacy, school nursing, secondary schools, security, student records

OVERVIEW

The Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules confer rights to individuals regarding their personally identifiable health information. All providers subject to HIPAA had to fully implement the provisions by April 13, 2003. Since then, school nurses and school health officials have been clamoring for guidance on how HIPAA and the Family Education Rights Privacy Act (FERPA) interface in the school environment.

Although school nurses were specifically included in drafts of the HIPAA regulations published prior to December 28, 2001, the Final Rule exempted school nurses and school health providers because a federal law that ensures the privacy of education records already exists—the Family Education Rights Privacy Act of 1974 (FERPA). Although FERPA does not specifically mention health records, any record created and maintained in a school for school district purposes is an education record (Gelfman & Schwab, 2001).

Table 1 compares the key provisions of FERPA and HIPAA, which have very similar privacy requirements and differ in only a few key areas (Bergren, 2001c):

- Education records can be shared internally with those who have a legitimate educational interest.
- Education records can be forwarded to another school that the child plans to attend or may attend without requiring an authorization to release records.
- HIPAA specifies how the privacy and security of oral, paper, and electronic personally identifiable health information is to be safeguarded by policy, accountability, and physical and electronic protections.
- HIPAA violations may result in substantial fines and possible incarceration.

EXCEPTIONS TO THE HIPAA EXEMPTION

Private Schools

If a private school accepts no federal funds and is not subject to FERPA, the school is not exempt from HIPAA. A school that accepts no federal funds would be subject to HIPAA Privacy, Security, and Transaction Rules if it engages in HIPAA transactions, such as electronic billing for any health-related services such as nursing, speech, physical therapy, or psychologist services.

Martha Dewey Bergren, RN, DNS, NCSN, BC, FNASN, teaches public health nursing and school nursing at the University of Illinois—Chicago College of Nursing. Dr. Bergren is a consultant to the National Task Force on Confidential Student Health Information and is certified in both school nursing and nursing informatics.

Table 1. Comparisons of FERPA and HIPAA

FERPA	HIPAA
Annual notice of rights to parents	Notice of Information Practices
Right to inspect education records	Right to access information
Right to request amendment to records	Right to request amendment to records
Record access log of who accessed record	Disclosure log of who accessed record
Consent to release information required	Noncoerced consent required
Use information for educational purposes only	Use information for health purposes only
Written criteria for access	Policies and procedures for access
Release only information necessary	Minimum disclosure
Security officer: none	Security officer
Confidentiality and privacy training: none	Confidentiality and privacy training
Security requirements: none	Security requirements: reasonable
Exceptions to Requiring Consent for Disclosure	**Exceptions to Requiring Consent for Disclosure**
Directory	Directory
Emergencies	Emergencies
Research	Research
Judicial order/subpoena	Judicial order/subpoena
Audit by state/federal officials	Audit by state/federal officials
School officials with "legitimate educational interest"	Treatment (modified August 2002)
	Quality assurance
	Public health
	Limited law-enforcement activities
	Body identification
Penalties	**Penalties**
Institutional sanctions	Security violations: $25,000
Loss of federal funding	Privacy violations
	With intent: $50,000
	Under false pretenses: $100,000/5 years in jail
	Personal or commercial gain: $250,000/10 years in jail

Note. From Bergren, 2001c. FERPA = Family Education Rights Privacy Act; HIPAA = Health Insurance Portability and Accountability Act.

Schools That Engage in HIPAA-Covered Transactions

Schools that accept federal funds that bill for health care provided by any school employee (nurse, speech therapist, or occupational therapist) must comply with the HIPAA Transactions Rules and use uniform code sets when requesting reimbursement electronically. Most school districts contract with business associates to perform HIPAA compliant billing functions. However, even though the district engages in a HIPAA-covered transaction, the records maintained for billed services are educational records. The student's personally identifiable information is protected by FERPA, not by HIPAA Privacy Rules.

Hybrid Entities

A Hybrid Entity is a health care agency that may have a health care component that conducts some activities that are covered by HIPAA and some that are not. The following examples represent a number of ways schools may qualify for Hybrid Entity status (Levin & Lalley, 2003).

Employee Health. In many school districts, the school nurse's scope of practice includes responsibility for employee health services. Records created for employee health purposes are not education records and are protected by HIPAA provisions if the district is a HIPAA-Covered Entity. The district meets the criteria as a HIPAA-Covered Entity in its employee health functions if it engages in HIPAA-covered transactions for payment, reimbursement, or as a health plan (Levin & Lalley, 2002). Schools districts that self-insure their employees for health and dental care are covered by HIPAA. Schools covered by HIPAA for employee health purposes must register as a Hybrid Entity—an agency that collects and maintains records subject to HIPAA and student records that are exempted by the HIPAA Privacy Rule. Workman's compensation insurance records are exempted from HIPAA regulations; however, many employers choose to impose HIPAA-level protections for all employee health records.

School Health Services Provided by Non-District Employees. Nurses who work in schools but are employees of another provider that is a HIPAA-Covered Entity may or may not create records that are subject to HIPAA regulations. In some jurisdictions, public health departments provide school nursing services, vision and hearing screening, and early childhood screening. In others, school health services are contracted out to hospitals or other agencies. School-based health clinics, in addition to providing primary care to students, may also provide school nursing services as a part of their contract. These agencies may conduct HIPAA-covered transactions and would be subject to HIPAA Privacy, Security, and Transaction Rules. These agen-

cies must register as a Hybrid Entity and must separate the paper and electronic records covered by FERPA created for educational purposes as a service to the school from records that are subject to HIPAA regulations. The contract between the school and the health department or the agency providing school health services should clearly identify which records are created as a service to the school district and are therefore education records covered by FERPA.

HIPAA/FERPA CONFLICTS

Despite the intention to exempt schools from the burden of HIPAA privacy provisions, schools encounter many conflicts that interfere with school health services. Overreaction to HIPAA that interferes with appropriate and timely treatment has been widespread (Parker, 2003). High penalties for each case of inappropriate disclosure, whether intentional or unintentional, have many hospitals and primary care office staff reluctant to share health information with anyone other than the client. Stories abound of physicians and primary care office staff refusing to share immunization dates, physical exam dates, information on children's care for Individuals with Disabilities Education Act–mandated school health services, and medication administration (Bergren, 2003). Some of the incidents reported include the following:

> . . . written authorization is not required by HIPAA for a HIPAA-Covered Entity to share information with nurses and others who provide treatment, but provider office or institution policies requiring authorization are allowable (Campanelli et al., 2003).

- Refusal of a physician's office to identify a smudged physical exam date on a fax, despite the school nurse reading every other date on the form to verify that she had the document, but a small portion was unreadable.
- Despite a signed authorization and the mother verifying the authorization by phone from the school health office, a physician's office refused to provide treatment information necessary for a student's return to school following hospitalization for a previously undiagnosed seizure disorder. The mother was required to drive from the school to the physician's office, collect the information, and drive it back to the school so the child could return to class.
- A physician claiming that faxing physical exam information is a HIPAA violation. A mother was required to pick up and drive a physical exam form to the school for her child to participate in athletics.
- Physicians or office staff refusing to answer questions about restrictions for physical education or athletic participation following long-term illnesses or injuries, quoting HIPAA regulations. One physician told a school nurse that the restriction for sports was none of the school nurse's business, and the coach should call to request it.

The level of information restriction illustrated by these anecdotes was not intended by HIPAA. The modifications issued in August 2002 specifically advise that safeguards be "reasonable" and not impede treatment (Campanelli et al., 2003). In fact, written authorization is not required by HIPAA for a HIPAA-Covered Entity to share information with nurses and others who provide treatment, but provider office or institution policies requiring authorization are allowable (Campanelli et al.). Paper-to-paper fax machines are not considered electronic transmission and are allowed for the sharing of health data that is not related to HIV, pregnancy, contraception, or sexually transmitted diseases (Bergren, 2001b; Campanelli et al.).

The Centers for Medicare and Medicaid Services (CMS), the United Stated Health and Human Services agency responsible for implementing HIPAA, has acknowledged that it has not provided technical guidance on conflicts that schools face, and assistance that has been promised in negotiating problems has not been forthcoming (Bergren, 2003).

HOW CAN A SCHOOL NURSE AVOID PROBLEMS?

Some of the problems school nurses face can be avoided by being proactive. There are several strategies to stay ahead of difficulties.

Interfacing With HIPAA-Covered Entities

Schools must anticipate providers' requirements and information-handling concerns when requesting information. Provide your school information handling policies to primary care providers and agencies annually or with authorizations to release information. Protection for student records within the school district and restrictions on sharing information with third parties should be explicit. Even though HIPAA allows providers to share health information with anyone providing treatment (Campanelli et al., 2003), providers are allowed to require a signed authorization. It is prudent practice to collect signed, HIPAA-compliant authorizations annually for all students with health issues that may require communication with a provider.

If a school is not providing treatment but requires records or information for assessment and evaluation purposes, providers are prohibited from releasing information to third parties unless requested on HIPAA-

compliant authorization forms, which are required whether a school is covered by FERPA, HIPAA, or neither. As long as the provider is covered by HIPAA, an authorization form for release of information must include the following:

- A specific and meaningful description of information.
- Name of person or class of persons to whom information is disclosed.
- Expiration date.
- Statement that authorization may be revoked at any time.
- Instructions on how to revoke authorization.
- Statement that once information is disclosed it may no longer be subject to HIPAA protections.
- Signature and date.
- Description of the signer's authority to act for the minor student (Bergren, 2003).

Performing Public Health Functions

Understanding of the public health exemptions from HIPAA Privacy Rules is evolving (Centers for Disease Control and Prevention, 2003). Schools have long supported public health immunization goals by requiring proof of immunization status prior to school entry and at regular intervals. School nurses have historically worked with primary providers and parents to document immunization status. HIPAA creates a barrier to the schools' role in this public health function. In states where the immunization and public health laws support it, attorney generals have published memorandums citing the public health exemption from HIPAA for sharing immunization data, allowing providers to share immunization data with schools without signed authorization. Massachusetts (http://www.state.ma.us/dph/cdc/epii/imm/school_req/hipaa_imm.htm) has an excellent example on its state Web site. Investigate your state's status on sharing immunization data through your state school nurse association leaders (http://www.nasn.org/affiliates/governancemap.htm) or state school nurse consultants (http://lserver.aea14.k12.ia.us/swp/tadkins/nassnc/nassnc_members.html).

Logs also impede a comprehensive evaluation of all of a student's contact with school health providers, violating professional standards of nursing documentation. Three decades after the passage of FERPA, many school nurses continue to record health office visits in a log format.

Strengthening FERPA Information Protections

Schools are exempt from HIPAA because FERPA protects student and family privacy rights. It is imperative that policies and procedures be reviewed and revised based on current standards. Some areas to be addressed are the following:

- *Notice of information practices:* FERPA requires schools to distribute a notice of information practices. Do you know where to find your district's notice? Have you reviewed it recently and evaluated its impact on the health records? The National Task Force on Confidential Student Health Information (2000) recommends explicitly including health records and any special handling or protections in the notice.
- *Limiting access:* The most basic method of protecting privacy is limiting access to records. Health records should be stored in locked file cabinets (Chueng, Clements, & Pechman, 1997) or in password-protected electronic databases (Bergren, 1999a). Policies should explicitly identify who has access to the full record and who makes decisions about record access and release of information (National Task Force on Confidential Student Health Information, 2000).
- *Updating documentation practices:* Prior to 1974 and the passage of FERPA, school health office records were frequently maintained in a log format. Student names and nursing notes were recorded sequentially. FERPA requires parent accessibility to their child's entire education record. Logs increase the difficulty of locating all entries for a particular student and require obliterating entries for other students on the same record. Subpoenaed logs cannot be altered to conceal names, violating the FERPA privacy rights of other students when shared with the courts or law enforcement officials. Logs also impede a comprehensive evaluation of all of a student's contact with school health providers, violating professional standards of nursing documentation. Three decades after the passage of FERPA, many school nurses continue to record health office visits in a log format. Education and health records should contain information on only one student in an individual folder, file, or electronic record.
- *Changing how health information is shared:* Distributing health concern lists to staff and administration and using medical alert fields in student information systems that alert all district employees to students' health concerns do not reflect the principles of sharing the minimum necessary information and only with those who have a legitimate educational interest. Nor do health concern lists meet the nurse's obligation to partner with the parents to provide those faculty and staff with health care plans or emergency plans

for students who legitimately need teacher and administrative knowledge of their health issue.

- *Changing information handling and storage outside the health office:* Health information is frequently collected and stored by athletic offices, coaches, teachers, field-trip monitors, bus drivers, cafeteria employees, and playground monitors (National Task Force on Confidential Student Health Information, 2000). School districts should identify the collection and storage of health information throughout the district to ensure that privacy concerns are addressed.

Distributing health concern lists to staff and administration and using medical alert fields in student information systems that alert all district employees to students' health concerns do not reflect the principles of sharing the minimum necessary information and only with those who have a legitimate educational interest.

Most fax machines are located in a school's main office and are a common method of receiving health information from parents and primary health providers. Fax machines that receive student and family health information and other educational records should be located in a secure area, monitored by one accountable employee who verifies that all pages are accounted for and who places records in an envelope addressed to the school nurse (Bergren, 2001b).

Health information cards, health checklists, and physical education forms are sent home to parents annually and pass through many hands before reaching the school nurse. Any forms that contain health information should be returned directly to the school nurse or placed in an accompanying envelope addressed to the school nurse to avoid inadvertent disclosure. One-sentence statements regarding permission to share health concerns with district employees on annual emergency and health cards do not meet informed consent standards and can be used as a trigger to investigate if a signed authorization for sharing information is necessary.

Many district employees work from home, make home visits, and collaborate on student health issues with providers and outside agencies. Policies should be established protecting student information should it leave district offices via paper files, laptop computers, and personal digital assistants (Bergren, 1999b).

Providing Privacy Training

FERPA and health information privacy training should be included in employee orientation and reviewed on an annual basis (National Task Force on Confidential Student Health Information, 2000). Signed acknowledgment of employees' understanding of their obligations and the repercussions for violating privacy is recommended (Bergren, 2001a). Employees responsible for the creation and maintenance of health records or electronic databases, such as attendance clerks, health office aides, and information technology technicians, should receive a more comprehensive education program.

One-sentence statements regarding permission to share health concerns with district employees on annual emergency and health cards do not meet informed consent standards . . . .

RESOURCES

The suggestions here are just a few of the steps that need to be taken to improve district practices in this age of federal information privacy. Many states have additional restrictions and protections for education and health records that supersede federal laws (National Task Force on Confidential Student Health Information, 2000). It is essential for school nurses as the caretakers of student health records to be confident in their understanding of HIPAA and FERPA requirements. School nurses are in a unique position to alert districts of the need to register as a Hybrid Entity and separate records subject to different federal laws. When changing traditional methods of school information sharing or asking primary providers to share their patient data with the school, it is important to be able to cite and produce supportive authoritative sources. Until technical guidance is issued by the Office of Civil Rights regarding health information in schools, attending workshops, and staying current with updates in the literature and on the Internet is recommended. The Office of Civil Rights (2003) responds to providers' requests for guidance on its *Frequently Asked Questions* Web site (http://www.hhs.gov/ocr/hipaa).

NASN acknowledges school nurses' need for information on meeting professional privacy standards and regulations. NASN (http://www.nasn.org) is offering sessions on HIPAA and FERPA at the 2004 National Conference in Seattle, has updated the NASN Issue Brief *Schools Nurses Role in Education Privacy Standards* (NASN, 2003), and plans to provide up-to-date information on its Web site as federal and state authorities provide guidance. The National Task Force on Confidential Student Health Information will be issuing a 2004 publication. In addition, the *Guidelines for Protecting Confidentiality of Student Health Records* (2000)

continues to provide comprehensive guidance for meeting FERPA requirements and implementing privacy and security for student health records. The National School Boards Association Council of School Attorneys (http://www.nsba.org), alert to HIPAA and FERPA issues, posts articles and interpretations on its Web site.

SUMMARY

Responsibility for students' and families' right to privacy does not rest solely on the efforts of licensed school health care providers. Administrators, staff, and teachers must be enlisted to work together to develop procedures and policy suggestions to ensure privacy for all education records across all school settings (National Task Force on Confidential Student Health Information, 2000). Exemption of schools from the HIPAA Privacy Rule was based on the premise that FERPA protects student and family health privacy. School nurses can avoid some of the problems and confusion that HIPAA has created by educating themselves and by being proactive in their communication and practices. HIPAA provides the impetus to examine information handling in schools, to update documentation to meet professional standards, and to embrace the spirit of federal privacy laws.

REFERENCES

Bergren, M. D. (1999a). Criteria for software evaluation: Legal issues. *Journal of School Nursing, 15*(2), 32–33.

Bergren, M. D. (1999b). Legal issues: Office management practices. *Journal of School Nursing, 15*(3), 40–41.

Bergren, M. D. (2001a). Electronic records and technology. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 317–334). North Branch, MN: Sunrise River Press.

Bergren, M. D. (2001b). The facts about faxing. *Journal of School Nursing, 17*(4), 210–212.

Bergren, M. D. (2001c). HIPAA hoopla: Privacy and security of identifiable health information. *Journal of School Nursing, 17*(6), 336–341.

Bergren, M. D. (2003). National Conference on HIPAA Privacy Rule. *NASNewsletter, 18*(4), 20–22.

Campanelli, R., McAndrew, S. D., Altarescu, L., Heide, C., Mayer, D., Kaminsky, S., & Seeger, R. K. (2003, March). Presented at the National Conference on the HIPAA Privacy Rule. Chicago: U.S. Department of Health and Human Services.

Centers for Disease Control and Prevention. (2003). HIPAA privacy rule and public health. Guidance from CDC and U.S. Department of Health and Human Services. *Morbidity and Mortality Weekly Review, 52*, 1–12. Retrieved April 11, 2003 from www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm

Chueng, O., Clements, B., & Pechman, E. (1997). *Protecting the privacy of student records: Guidelines for education agencies*. Washington, DC: National Center for Educational Statistics.

Family Education Rights Privacy Act, 20 U.S.C. § 1232g. Retrieved November 22, 2003 from http://www.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf

Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 (1996). Retrieved February 2, 2004 from http://cms.hhs.gov/hipaa/hipaa2/default.asp

Gelfman, M. H. B., & Schwab, N. C. (2001). School health records and documentation. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 297–316). North Branch, MN: Sunrise River Press.

Levin, M., & Lalley, P. (2002, December). Is the HIPAA beast coming to your school district? *Inquiry and Analysis*, 1–4. Retrieved March 6, 2003 from http://www.nsba.org/cosa

Levin, M., & Lalley, P. (2003, January). What to do if the HIPAA beast is at your door. *Inquiry and Analysis*, 1–4. Retrieved March 6, 2003 from http://www.nsba.org/cosa

National Association of School Nurses. (2003). Issue brief: School health nurse's role in education: Privacy standards for student health records. *Journal of School Nursing, 19*(2), 119–123. Retrieved December 21, 2003 from http://www.nasn.org/briefs/hipaa.htm

National Task Force on Confidential Student Health Information. (2000). *Guidelines for protecting confidential student health information*. Kent, OH: American School Health Association.

Office of Civil Rights. (2003). HIPAA: Frequently asked questions. Office of Civil Rights, United States Department of Health and Human Services. Retrieved November 22, 2003 from http://www.hhs.gov/ocr/hipaa

Parker, L. (2003, October 17). Medical-privacy law creates wide confusion: Doctors, hospitals and EMS sometimes overreact. *USA Today*, A1.